BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. H107908

JESSIE D. ELLIS, EMPLOYEE	CLAIMANT
CITY OF CONWAY, EMPLOYER	RESPONDENT
ARKANSAS MUNICIPAL LEAGUE WORKERS' COMPENSATION TRUST, INSURANCE CARRIER/TPA	RESPONDENT

OPINION FILED JUNE 19, 2024

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

Claimant represented by the HONORABLE EDDIE H. WALKER, JR., Attorney at Law, Fort Smith, Arkansas.

Respondents represented by the HONORABLE JARROD S. PARRISH, Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The claimant appeals an administrative law judge's opinion filed January 2, 2024. The administrative law judge found that the claimant "failed to establish a compensable closed head injury with medical evidence supported by objective findings." After reviewing the entire record *de novo*, the Full Commission reverses the administrative law judge's opinion. The Full Commission finds that the claimant proved he sustained a compensable closed head injury. We find that the claimant proved he was entitled to reasonably necessary medical treatment provided in connection with the compensable injury.

I. HISTORY

The record indicates that Jessie Ellis, now age 26, became employed with the respondents, Conway Police Department, in December 2019. The parties stipulated that the employment relationship existed on June 17, 2020. The claimant testified on direct examination:

> Q. Mr. Ellis, would you briefly explain to us how you got hurt working for the Conway Police Department on June 16, 2020?
> A. Yeah. So it started off as a vehicle pursuit drill. I was chasing a suspect, which was another officer, and we went through, right next to like a store in Conway, right around that area, and we proceeded then behind the St. Joseph High School, like we visited the high school. And as we stopped the suspect, the officer gets out of the car and starts running. So I'm giving chase and we're running as hard as we can go, and as I catch up to him, I reached out to catch him, and you know, I'm a big guy. I'm 6'5", I was 300 pounds at the time, and this officer is probably like 5'6" to 5'8", and like 150 to 180. So I reached out to catch him and I overextend, and so I know I'm going to fall so I let him go, because I didn't want to fall on him, and that led to me hitting my head on the sidewalk.
> Q. Now, when you say you hit your head on the sidewalk, some of the medical records say that you hit your head on the curb. Did you hit on the sidewalk or on the curb?
> A. I believe it was the curb. Yeah, it was the curb. I hit the corner of my head on the curb of the sidewalk.
> Q. What material was that curb made out of?
> A. I would say concrete.

The parties stipulated that the claimant "sustained a compensable work-related injury abrasion to his head above the eye, and also his left knuckle, and left knee."

According to the record, the claimant received emergency treatment on June 17, 2020:

> Patient fell while giving chase, landed on pavement, denies LOC or neck pain, has abrasion to left brow, abrasion and swelling to left hand, abrasion right lower leg….
> Patient is a police officer; they were doing a pursuit drill tonight. He was running, fell forward striking left hand, right leg and the left forehead on the ground. Denies any loss of consciousness. Denies any neck pain. States following was slightly sore, some nausea and did have emesis once on arrival to the emergency room. He reports his nausea has resolved following the emesis. Denies any significant headache. No numbness or weakness. No vision change.

Dr. Robert M. Wycoff's diagnosis on June 17, 2020 was "Mild closed head injury, initial encounter. Abrasion of left eyebrow, initial encounter. Abrasion of left hand, initial encounter. Abrasion of right lower extremity, initial encounter."

An EMT noted on June 20, 2020, "22 male c/o a lot of confusion after a fall he had on Wednesday. Pt states that he was seen here on Wednesday. Pt states that a few hours after leaving the hospital he started to have a dull headache. Pt states that he worked a shift on Friday and was having a hard time concentrating and had some confusion throughout the shift."

A CT of the claimant's head was taken on June 20, 2020 with the impression, "No acute intracranial findings."

Dr. Gil E. Johnson examined the claimant on June 22, 2020:

> Jessie presents with closed head trauma. He was injured when chasing a suspect on 6/16/20 close [to] the St. Joe school here in Conway. He fell when he lost his balance when he was apprehending the suspect and fell onto the concrete striking his head – left side above the left eye on the frontal and parietal skull. He went to the emergency room fairly soon after the incident happened he was seen [and] released. He was checked he states and then discharged. After that he developed symptoms of a headache and fogginess and he went back to that same emergency room at BMC in Conway the next Saturday 6/20/20. The event happened on Tuesday 6/16/20. The CT scan was done and he was released. He was given head trauma instructions he states and discharge….
> Jessie is alert and oriented time person [and] place. He has had some recent memory issues since the accident [happened] he reports. He appears to be in no acute distress at this time. There's a small abrasion and soft tissue swelling just above the laptop. This is quite tender to touch. I cannot palpitate crepitus. Cranial nerve exam II – XII are intact. Finger nose finger and [heel] knee shin test are within normal limits. There's no sign of dysmetria and no tremor….
> **Impression:**
> 1. Closed head trauma with contusion to frontal/parietal skull.
> 2. Posttraumatic headache.
> 3. Nausea and vomiting, related to head trauma.
> 4. Slightly altered mental status related to head trauma, currently stable.

Dr. Johnson treated the claimant conservatively, and noted on June 24, 2020, "Jessie returns for follow-up for head trauma. He has improved from the initial visit. He's noticed that he is not as groggy and feels better although he still has some posttraumatic headache….If his condition [gets] worse before the recheck I've [advised] him to contact me immediately [or] go to the emergency room." Dr. Johnson continued to provide follow-up treatment and noted on July 7, 2020, "This was a fairly significant injury."

Dr. Johnson reported on July 27, 2020, “He states that his headaches have returned and he’s noticed a change in his memory….I discussed my findings with the radiologist and an MRI is indicated." An MRI of the claimant’s brain was taken on July 30, 2020 with the impression, “Normal brain.”

The claimant followed up with Dr. Johnson on July 31, 2020:

> The MRI procedure was done on 7/30/20. The results showed no acute abnormality….Interpretation was normal brain….
> Jessie has not reached maximum medical benefit and still is experiencing symptoms most likely related to postconcussive syndrome with posttraumatic headaches. At this point evaluation by a neurologist would be helpful and I’m going to contact the Workmen’s Comp. case manager and get approval for referral to a network specialist….

Dr. Barry D. Baskin evaluated the claimant on September 3, 2020:

> Mr. Ellis is a 22-year-old gentleman from Conway who is a police officer for the Conway City Police. He fell and hit [his] left forehead doing a pursuit training drill. He reached out to grab another officer by the collar to try to bring him down and fell. He had a left eyebrow laceration that did not require any staples or stitches. He has had a CT of his head that was normal. He later saw Dr. Gil Johnson, several visits, and Dr. Johnson did an MRI of his brain on 7/30/2020 that was negative. He has seen Dr. Johnson seven visits. He has a history of preexisting Bell’s palsy on the right that never completely resolved and he has had some mild residual ptosis on the right. He has been diagnosed with a questionable post concussive syndrome. He has been released to light duty and currently is doing computer work. He has tried ibuprofen and over the counter medications without much benefit with his headaches. He states that his girlfriend has noted that he just seems to be a little foggy. He states he is slow to respond to questions. He is fatigued….He states he has some emotional

> lability and a short fuse and he is quick to anger. He states that was not the case prior. His records have been reviewed. Dr. Gil Johnson's records are reviewed as are emergency medicine notes from his initial treatment. CT of the head that was normal. Next, MRI of the head which was normal. Mr. Ellis has had no therapy….He has a small residual scar from when he had the laceration over his left lateral eyebrow.

Dr. Baskin referred the claimant to other physicians for additional evaluation and diagnostic testing. Dr. Baskin also returned the claimant to restricted work duty.

Dr. Baskin gave the following impression on October 6, 2020: "Mr. Ellis has had a mild closed head injury on 6/17/2020. He has residual headaches, memory loss and some blurring of his vision. Speech therapy has noted some loss of executive function and memory deficits. I think he should be seen by a neuropsychologist for formal neuropsych testing. We are going to send him to Dr. Renee Mageira-Planey for a neuropsych assessment. I reviewed his eye evaluation which was negative. I will see him back after his neuropsych assessment in about 4 weeks."

Dr. Renee Magiera-Planey provided a Neuropsychological Evaluation on November 13, 2020 and diagnosed the following:

> Mr. Ellis's medical records, behavioral presentation and best results meet the diagnostic criteria for an acquired Cognitive disorder f09, mild. Mr. Ellis displayed mild impairments in his progressive language skills and mild impairments in his comprehension. He displayed mild impairments in his brief attention span and mild-to-moderate impairments in sustained and divided attention. There were mild impairments in his immediate visual short-term memory functions and mild

> impairments in his perceptual reasoning skills for visually presented information.
> Mr. Ellis also described changes in his mood and level of patience and tolerance after the accident.
> At this time, Mr. Ellis's level of performance indicates he will have difficulty returning to many of his previous duties as a police officer.
> Mr. Ellis is receiving therapies at Baptist Health Rehabilitation Institute to address the residual deficits in his cognitive and language functions.
> A review of those records indicates he is making progress. It is recommended he continue with those therapies.
> Mr. Ellis may be an appropriate candidate for the use of a mood stabilizer to help with the reported anxiety and mood swings….

The claimant continued to follow up with Dr. Baskin, who stated in part on December 17, 2020, "I still feel that further neuropsych testing would be of value in this case. Mr. Ellis does not have any objective findings with regards to imaging studies or neurologic pathology….Our plan is to pursue a neuropsych assessment with Dr. Zolten."

An occupational therapist noted on January 7, 2021, "Jessie Ellis demonstrated the fitness to operate a vehicle….Mr. Ellis is recommended for approval by physician to resume driving independently."

Dr. Jennifer I. Doyle summarized for Dr. Baskin on January 27, 2021, "A 22-year-old male with closed head injury in June of 2020 with headaches, blurred vision and disorientation. From an ocular standpoint I do not see any permanent damage to the afferent pathway. His exam is completely normal today, and I am hoping that with time his symptoms will

also improve. The only suggestion that I have would be to maybe try some sunglasses, discuss increasing his dose of Lexapro, complete the sleep study and see Dr. Zolten."

An EEG was done on February 24, 2021 with the impression, "This is a normal EEG."

Dr. A.J. Zolten provided a Neuropsychological Evaluation on April 2, 2021 and gave the following impressions:

> 1. Jessie Ellis is a 23-year-old male with recent history of a mild Traumatic Brain Injury (S06.2), with post-concussive symptoms and complaints of neurocognitive deficits. Current test results were not entirely reliable, with evidence of both inconsistent effort, and over-reporting of psychological symptoms. In general, there are no overt deficits noted in Jessie's neurocognitive profile with the exception of poor visual constructions skills and the related incidental visual memory after the visual construction task. Visual spatial relations have improved when compared to the previous test results as apparently have Jessie's language skills. To the degree that Jessie still demonstrates some problems with visual construction, this may reflect some very mild residual neurocognitive deficit, but the lack of reliability obscures this. If present, this mild weakness does not interfere with Jessie's overall adaptive functioning.
> 2. Jessie's inconsistent effort is most likely a function of psychological overlay….
> 3. Much more troubling is the clear presence of Post Traumatic Stress Disorder, with symptoms of de-realization/de-personalization as part of this clinical picture. These symptoms are a serious variant of interpersonal numbness often seen with PTSD patients, and indicate a loosening or strain on reality testing. Jessie is in clear need of counseling to help him cope with his PTSD symptoms. He can be referred to Chenal Family Therapy, which has a Conway office[.]

> 4. Jessie's MMPI-2 results are certainly problematic from the standpoint of his return to full duty as a police officer. As a current picture of psychological functioning, Jessie's results are much too unstable for return to active duty with a side arm. I would recommend that he undergo a full course of PTSD therapy, and if this is successful in quelling his symptoms, he be re-evaluated for fitness.

The claimant began treating with Tobi Taylor, LPC on or about May 10, 2021. Ms.Taylor noted that the claimant's treatment plan included "cognitive behavioral therapy, mindfulness/meditation, and EMDR to address anxiety, depression, and possible PTSD."

Dr. Baskin provided an Impairment Rating on September 14, 2021 and reported in part:

> Mr. Ellis initially was seen by me 9/3/2020 on referral from Dr. Johnson and Stacy Mathis, RN for closed head injury. He fell on the job working on pursuit training and hit his head on a concrete curb. He had residual memory loss, blurred vision, irritability, anger, fatigue and generalized weakness….
> My overall impression at this point 9/14/2021 is that Mr. Ellis did in fact sustain a closed head injury and to some extent a traumatic brain injury without any significant bleeding or skull fracture or objective findings on his CT of the head or MRI of the head. He clearly has symptoms of PTSD versus adjustment disorder. He is not able to go back to work as a police officer. All parties involved in his care are in agreement on that. I had suggested that we have him see a psychiatrist and referred him to Mary Paal for help with medication management but Workers' Comp would not approve that. He still has intrusive thoughts and dreams and is sleeping poorly and tired during the day.
> Using the AMA Guides to the Evaluation of Permanent Impairment 4th Edition and turning to the chapter on the nervous system on page 142 and reviewing table 2 mental status impairments and table 3 emotional and behavioral impairments, Jessie presents with mild limitation of some but

> not all social and interpersonal daily functioning….He would have a 14% whole person impairment which is mild limitation of some but not all social and interpersonal daily living functions….I think he still needs follow up with Tobi Taylor and I would recommend continued counseling sessions with her for now. He needs to see me about every 3-4 months for now but eventually I will probably see him only once or twice a year. I am hoping that he will continue to improve. He seems fairly dejected about the fact that he is still dealing with issues of his head injury….He will still be covered through Workers' Comp I hope for his counseling and his visits back to see me….He still may need medical management as far as his depression and anxiety medicines and his sleep medicine….

The respondents terminated the claimant's employment effective September 29, 2021.

Dr. Baskin corresponded with counsel for the respondents on February 5, 2022:

> I am in receipt of a letter from you dated January 27, 2022 requesting information on Mr. Ellis.
> I have gone back through my records in order the answer the questions you proposed. First of all, this is a complicated case. Mr. Ellis sustained a closed head injury on the job as a rookie Conway Police Department Officer on June 17, 2020. He had a closed head injury without any significant hemorrhages, skull fracture, or significant objective findings on his imaging studies. He was referred to me by Stacy Mathis, RN, case manager with JMS Consulting, and Dr. Gil Johnson, a primary care physician in Conway, on September 3, 2020. From the first time I saw Mr. Ellis, I had concerns that he was a bit addled. He seemed a bit confused and unable to think clearly. I sent him to Michelle Cox, a speech and language pathologist at Baptist Health Rehabilitation Institution, for a speech and language evaluation and cognitive assessment for problem solving, memory, and executive function. Ms. Cox felt like that he had moderate cognitive deficits. I spoke with Ms. Cox about Mr. Ellis in the last 3 days prior to dictating this note to you and reviewed his

case, and she feels strongly that he was impaired from his closed head injury. I referred him to Renee Magiera-Planey, PhD, neuropsychologist at Baptist Health Rehabilitation for further evaluation. This report was done back in November 2020. Dr. Magiera-Planey felt that Mr. Ellis' diagnosis was consistent with an acquired cognitive disorder that was mild…. Mr. Ellis remains, as of my last appointment, a little better than when I first saw him….

As you know, surveillance was undertaken. I did not really recommend that this be done, but it was suggested through Worker's Compensation, and I approved it. It did not prove anything one way or the other with regards to Mr. Ellis' condition.

In your letter you have addressed several concerns, and I will try to respond to them at this point. First, you have addressed that he saw a psychological counselor, Tobi Taylor, in Conway. You noted that she cannot state with reasonable certainty whether Mr. Ellis' diagnosis stems specifically from his accident. It is noted in his history that he had a step-father who was abusive to Jessie's mother. It is clearly speculation that that has anything to do with his current symptoms. More importantly, it should be noted that Mr. Ellis was never reported to have had any problems with memory, problem solving, visuoperceptual deficit, visual problems, driving, etc. prior to his date of injury. I think it is clearly more likely than not that his symptoms stem from his work injury and not from some obscure pre-existing condition growing up. Dr. Zolten felt like that Mr. Ellis may have gone back to work too soon and been threatened by that and developed PTSD symptoms. The onset of these symptoms, in my opinion, are related to his work injury.

You noted in your letter that his neuro exam was normal. That is not uncommon with a patient with a traumatic brain injury, postconcussion syndrome, or disorders of consciousness (DOI). You further indicated his neurologist indicated his exam was completely normal and an EEG indicated no evidence of seizures or any clearcut abnormalities. We did have him see a neurologist and an EEG was done and it was negative for evidence of seizure disorder….

You questioned what objective findings I relied upon in regard to his diagnosis of traumatic brain injury or closed head injury.

> Mr. Ellis had a definable work injury in which he hit his head. He was running and fell and hit his head on the concrete curb. He was dazed from that. He has continued to be somewhat dazed and mildly confused over the last year and a half, although he has clearly improved….
> I believe based on my extensive amount of time with Mr. Ellis in the office face-to-face that this gentleman sustained a mild closed head injury with residual cognitive deficits and emotional and behavioral deficits. Based upon my evaluation of Mr. Ellis over the last year as well as my training experience, I feel like I have given him a fairly minimal impairment rating using table 3 on page 142 of the AMA Guides to the Evaluation of Permanent Impairment 4th Edition. This is mild limitation of daily social and interpersonal functioning. That rating scale goes from 0% to 14% on the mild rating. I rated him at 9%.
> You have further mentioned that I recommend ongoing counseling in addition to additional prescription medication for Mr. Ellis. I have felt that Mr. Ellis would benefit from prescription medications for his depression and anxiety. I have also felt that counseling was necessary for his PTSD. In particular, I felt that he needed cognitive behavioral therapy (CBT) or EMDR, which is an eye movement desensitization type therapy for PTSD. Both of these are currently in vogue and are useful for patients with PTSD. I have not set a stop date on Mr. Ellis' therapy. If we can get him in for therapy for another few months I would be pleased. I believe I have an appointment to see Mr. Ellis back in follow-up on March 16, 2022. Depending on how he is doing then, we may be able to discontinue further therapies….

The claimant's attorney examined Dr. Baskin during a deposition taken March 9, 2022:

> Q. Now, there's some terms that are used throughout the medical records, and I'd like for you to kind of clarify them for me if you can. It talks about closed head injuries, it talks about TBI, traumatic brain injury, and it talks about concussion. What's the difference between those three things, or is there a difference between those three things?

A. Well, a closed head injury is when somebody's had trauma to their head, usually blunt trauma. It's not penetrating trauma, and they have a – they don't have – you don't have – with a closed head injury, you don't have to have loss of consciousness. You could. But a closed head injury could be me going to sleep and hitting my head on the table and having some pain or headaches or maybe dizziness after that. A traumatic brain injury is when you have had trauma to the head, and you have findings on the imaging studies where you might see a skull fracture again or a subdural or epidural bleed, things like that inside the skull, intracranial pathology. And then now they use another term, "disorders of consciousness," frequently to address people that have had a closed head injury and/or a traumatic brain injury. It's all kind of – it's all just terminology for the most part, but a closed head injury is essentially not as bad, typically, as somebody who's had a traumatic brain injury as far as the findings.

Q. And what about a concussion?

A. A concussion would – is essentially when people have had a blow to their head. They may have some alteration of their level of consciousness, they may be knocked out, and they – their mental status is altered in some way. Those can be repetitive trauma, like the football players, the, you know, the repetitive head injuries. People have been hit and hit and hit, and they began to have post-concussion syndrome, but in this case, I think he fell – it looked – it sounded like he fell, hit his head, and had a closed head injury without any positive findings on his imaging studies….

Q. What are some of the symptoms that are commonly associated with a closed head injury?

A. Well, it – there's lots of them. I mean, a closed head injury could cause somebody to have – commonly, we see people that have headaches. They have – they've had a head injury. I see lots of people that have been hurt with a blow to their head, and they have headaches. Sometimes they do have, occasionally, blurred vision. They have – sometimes they have memory loss. Sometimes they have loss of concentration, focus, inability to do things that they could do before any difficulty, having trouble with those now. Those are some of the more common things I see with people that have had a closed head injury….

On January 25, 2023, the claimant began treating at HonorHealth in Peoria, Arizona. The assessment at that time included "Closed traumatic brain injury, with loss of consciousness of 30 minutes or less, sequela."

A pre-hearing order was filed on April 18, 2023. The claimant contended, "a. The Claimant contends that as the result of the compensable trauma to his head he is entitled to additional medical treatment. b. The Claimant contends that his authorized treating physician, Dr. Barry Baskins (sic), recommended additional professional counseling and a psychiatric evaluation for the claimant and both of those recommendations have been rejected by the respondents. c. The claimant contends that he has sustained some degree of permanent injury regarding his job related accident; however, assessment of the extent of that permanent injury is premature and he therefore reserves that issue for future determination after the recommended medical treatment has been concluded."

The respondents contended, "Respondents contend that there are no objective findings to support permanent impairment associated with the claimant's 6/17/20 injury. Respondents assert that the work-related injury is not the major cause of any permanency the claimant has. Respondents further contend that Claimant is at maximum medical improvement and that additional medical and/or psychological treatment is not reasonable and

necessary. Respondents contend that without the permanent impairment, wage loss disability is not applicable. Lastly, Respondents contend they are entitled to a credit for overpayment of PPD in the amount of $3,208.00."

The parties agreed to litigate the following issues:

1. The claimant's entitlement to an assessment by a vocational rehabilitation professional in order to determine an appropriate program of vocational training.
2. The claimant's entitlement to additional medical treatment.
3. Compensability of a brain injury.
4. All other issues are reserved.

Dr. Harpreet Kaur Sandhu examined the claimant at HonorHealth Neurology on May 31, 2023:

> Patient has a past history of a head injury associated with work in 2020. Patient has 260+ pages of records which have been reviewed. Patient had a worker's compensation case in regards to this and has undergone extensive workup including head CT, MRI of the brain, EEG and neuropsychological evaluation. Patient's neuropsychological assessment had findings of an acquired cognitive disorder. There [were] also some concerns for possible PTSD. Patient has recently been seen by behavioral health and has a history of generalized anxiety disorder….
> 25-year-old male past medical history of a head injury in 2020 with a reported history of postconcussion syndrome presents to establish care. Patient has undergone extensive neurological workup including a Neuro-Ophthalmology evaluation which was reported to be within normal limits. Patient's neurological workup has been nondiagnostic and patient's chief complaint continues to be his behavioral and psychological issues. Discussed the importance of establishing with behavioral health including Psychology and Psychiatry to help with both cognitive therapy and/or medication. Discussed the option of a repeat neuropsychological assessment and patient would like to continue with repeat testing. Discussed the importance of

> continuing with a healthy diet and exercise regimen, working on modifiable comorbidities, adequate sleep as well as stress management.

Dr. Sandhu instructed the claimant to "Return after neuropsych testing."

Dr. Danny Rosenbaum, a clinical neuropsychologist, evaluated the claimant on July 21, 2023 and recommended the following:

> 1). Should the patient choose to continue in rehab, cognitive retraining activities such as computer and board games targeting processing speed and attention may help the patient in those areas of need.
> 2). Given the patient's admitted significant negative mood, psychotherapeutic intervention is recommended.
> 3). Further, monitoring the patient's psychotropic medication is suggested especially since it is a relatively new prescription.
> 4). The patient stated that he has recently suffered from Bell's Palsy with noted hand weakness. A follow up with a neurologist [may] prove beneficial.

A hearing was held on September 26, 2023. At that time, the claimant contended that he sustained a closed head injury, and that he was entitled to reasonably necessary medical treatment. All other issues were reserved.

An administrative law judge filed an opinion on January 2, 2024. The administrative law judge found, among other things, that the claimant "failed to establish a compensable closed head injury." The administrative law judge found that the claimant was "not entitled to additional medical and attorney fees at this time." The claimant appeals to the Full Commission.

II. ADJUDICATION

A. Compensability

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 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).

An administrative law judge found in the present matter, "3. That the claimant has failed to establish a compensable closed head injury with medical evidence supported by objective findings." 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). The Full Commission finds in the present matter that that the claimant was a credible witness, and that the claimant proved by a preponderance of the evidence that he sustained a compensable closed head injury.

The claimant became employed as a probationary Patrolman for the respondents in December 2019. The parties stipulated that the employment relationship existed on June 17, 2020. The claimant contended that he sustained an accidental injury while performing a training exercise with the respondent-employer on June 16, 2020. The claimant testified that, while giving chase to another officer, he fell and struck his head on a concrete curb. The parties stipulated that the claimant "sustained a compensable work-related injury abrasion to his head above the eye, and also his left knuckle, and left knee."

The evidence demonstrates that the claimant sustained a compensable closed head injury on or about June 16, 2020 as a result of the accidental fall. The medical records corroborated the claimant's testimony that he fell and struck his head. Dr. Wycoff examined the

claimant on June 17, 2020 and diagnosed "Mild closed head injury, initial encounter." Dr. Johnson noted on June 22, 2020, "Jessie presents with closed head trauma." Dr. Johnson examined the claimant's forehead and noted "a small abrasion and soft tissue swelling[.]" Swelling can be an objective medical finding establishing a compensable injury. *White Cnty. Med. Ctr. v. Johnson*, 2022 Ark. App. 262, 646 S.W.3d 245. Dr. Johnson's impression included "1. Closed head trauma with contusion to frontal/parietal skull." The Full Commission finds that Dr. Johnson's impression of closed head trauma was supported by objective medical findings, namely "soft tissue swelling" in the claimant's forehead. Dr. Johnson noted on July 7, 2020, "This was a fairly significant injury."

Dr. Baskin began treating the claimant on September 3, 2020 and subsequently gave the impression, "Mr. Ellis has had a mild closed head injury on 6/17/2020. He has residual headaches, memory loss and some blurring of his vision." The claimant thereafter treated with Dr. Magiera-Planey and Dr. Zolten. Dr. Doyle's impression on January 27, 2021 was "A 22-year-old male with closed head injury in June of 2020 with headaches, blurred vision and disorientation." Dr. Baskin informed counsel for the respondents on February 5, 2022, "I believe based on my extensive amount of time with Mr. Ellis in the office face-to-face that this gentleman sustained a mild closed head injury with residual cognitive deficits and emotional and

behavioral deficits." During a a deposition taken March 9, 2022, Dr. Baskin expertly testified with regard to the distinction between a "closed head injury" and "traumatic brain injury." 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, the Full Commission finds that Dr. Baskin's opinion is supported by the record and is entitled to significant evidentiary weight. Dr. Baskin's diagnosis of a closed head injury was supported by Dr. Wycoff, Dr. Johnson, Dr. Doyle, and Dr. Sandhu.

The Full Commission finds that the claimant proved 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 proved that he sustained an accidental injury causing physical harm to the body, *viz.*, a "closed head injury." The claimant proved that the injury arose out of and in the course of employment and required medical services. The injury was caused by a specific incident and was identifiable by time and place of occurrence on or about June 16, 2020. In addition, the claimant established a compensable injury by medical evidence supported by objective findings, namely Dr. Johnson's report of "soft tissue swelling" in the claimant's forehead. We find that this objective finding was causally

related to the compensable injury and was not the result of a prior injury or pre-existing condition.

B. Medical Treatment

The employer shall promptly provide for an injured employee such medical treatment as may be reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. §11-9-508(a)(Repl. 2012). The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonably necessary. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Wright Contracting Co. v. Randall*, 12 Ark. App. 358, 676 S.W.2d 750 (1984).

In the present matter, the Full Commission has found that the claimant proved he sustained a compensable closed head injury on or about June 16, 2020. We find that the claimant proved by a preponderance of the evidence that the medical treatment of record thereafter was reasonably necessary in connection with the compensable injury. Dr. Baskin assigned a 14% permanent impairment rating on September 14, 2021. 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). We therefore find

that the claimant reached the end of his healing period for the compensable injury no later than September 14, 2021. Nevertheless, it is well-settled that a claimant may be entitled to ongoing medical treatment after the healing period has ended, if said treatment is geared toward management of the compensable injury. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004).

The Full Commission finds that the treatment of record provided following Dr. Baskin's assessment of permanent anatomical impairment was reasonably necessary in connection with the compensable injury. We find that the current treatment recommendations of Dr. Sandhu, which include additional neuropsychological testing, are reasonably necessary.

After reviewing the entire record *de novo*, the Full Commission finds that the claimant proved by a preponderance of the evidence that he sustained a compensable closed head injury. The Full Commission finds that the medical treatment of record provided on and after June 17, 2020 was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a)(Repl. 2012). The claimant proved that Dr. Sandhu's current treatment recommendations are reasonably necessary in connection with the compensable injury. For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to a 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 Mayton dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's finding that the claimant proved by a preponderance of the evidence that he sustained a compensable closed head injury on or about June 16, 2020, and is entitled to medical treatment for said injury.

A compensable injury must be established by medical evidence supported by "objective findings." Ark. Code Ann. § 11-9-102(4)(D). Objective findings cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16).

It is within the Commission's province to weigh all the medical evidence, to determine what is most credible, and to determine its medical soundness and probative force. *Sheridan Sch*. *Dist*. *v*. *Wise*, 2021 Ark. App. 459, 637 S.W.3d 280 (2021). In weighing the evidence, the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. *Id*. 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. *White v*. *Gregg Agricultural Ent*erprises, 72 Ark. App. 309, 37 S.W.3d 649 (2001).

To date, there have been no objective findings that claimant suffered a closed head brain injury on June 17, 2020, despite numerous evaluations and diagnostic testing including a head CT scan on June 20, 2020, a brain MRI on July 30, 2020, and an EEG on February 24, 2021. (Resp. Ex. 1, Pp. 1-9). None of these tests or any in-person examinations revealed any objective findings of a traumatic brain injury.

Dr. Barry Baskin, the claimant's primary treating physician on this issue, testified unequivocally at his March 9, 2022 deposition that there were no objective findings on the claimant's diagnostic studies to prove a closed injury and that his in-person examinations were unimpressive. In fact, Dr. Baskin testified he could not identify any objective evidence supporting the existence of a brain injury or the existence of a mental or psychological or emotional disorder. (Depo. of Dr. Barry Baskin, Pp. 8, 10, 13, 35, 53-54). Dr. Baskin opined that there was no objective basis to explain the alleged complaints, fears, and phobias the claimant developed after his injury, explaining that the claimant had a negative work-up and:

> didn't really have any significant objective findings, and his exam

> was not really particularly impressive either. I mean, he had – I guess he was – his ability to give a history and stay on track was – he was kind of all over the place, and – but again, his neuro exam was normal. He had a normal gait; he had normal movements, and I just felt like we – that based on what I saw, which again, there weren't a lot of hard objective findings.

(*Id*. at Pp. 8, 43-44).

When asked directly, Dr. Baskin testified that there are, "[n]one – not any measurable objective findings" of a traumatic brain or closed-head injury. (*Id*. at P. 35).

The claimant underwent a battery of neuropsychological tests by Dr. A.J. Zolten on April 2, 2021. (Resp. Ex. 1, Pp. 10-14). These tests revealed normal to above average cognition and no evidence of neurocognitive deficit. Dr. Zolten noted the claimant's symptom reporting indicated clear over-reporting of symptoms, both psychological and somatic. There was evidence of inconsistent effort and over-reporting of psychological symptoms. *Id*.

Dr. Baskin testified that it was hard for him to know how much of the claimant's problems were pre-morbid as opposed to post-traumatic. (Depo. of Dr. Barry Baskin, Pp. 44-45)

At his deposition, Dr. Baskin had the following exchange:

> Q: (by Mr. Parrish) If someone truly had a traumatic brain injury or closed head injury, would you expect them to have no evidence of any damage to their brain across the spectrum of all those tests and examinations?
>
> A: It would be unusual to have somebody have all those tests and evaluations and not have any positive objective findings. Again, I have seen people that had no findings on scans, and they were clearly - had had a head injury and had alteration of their level of consciousness, but more times than not, I would say some of those would be positive. You would expect, more times than not, some of those things to be positive than for all of them to be negative.

(*Id*. at Pp. 45-46).

In short, Dr. Baskin could not state within a reasonable degree of medical certainty that there was movement of the claimant's brain at the time of his fall, that the claimant sustained bruising to his brain, or that the claimant's emotional or behavioral complaints were related to the accident. (*Id*. at Pp. 60-63).

As further evidence of the claimant's exaggeration or manipulation of his injuries, the sole indication that the claimant may be suffering from an ongoing "adjustment disorder with mixed anxiety and depressed mood," comes from the opinion of LPC (Licensed Professional Counselor) Tobi Taylor, who was deposed on April 4, 2023. (*see* Depo. of Tobi Taylor). The claimant's diagnosis of adjustment disorder with mixed anxiety and depressed mood by Tobi Taylor was based entirely on the claimant's own reporting of symptoms.

When asked if the claimant could manipulate his treatment, Ms. Taylor responded, "I mean I guess everything could be manipulated." (Depo. of Tobi Taylor, Pp. 11). Ms. Taylor testified that she treats a lot of trauma induced conditions, but when asked if there were any type of validity processing to measure whether somebody is just making this stuff up, she responded that the client was the only source of information for her. (*Id*. at Pp.12-13). She also stated that she had reviewed some psychological testing on the claimant, and that testing would include validity checks, "[b]ut if somebody was telling me, 'I'm having these symptoms,' I don't have a way to refute that they're having those symptoms." (*Id*. at P.14).

Ms. Taylor went on to testify, the physical manifestations that are typically associated with closed head injuries, again, would be outside of her scope. (*Id*. at P.16). Specifically, Ms. Taylor stated she could not give

an opinion as to whether the fall in question was the triggering event of the issues in which she was treating the claimant. She testified she was treating what -- how [a symptom] shows up in his daily life, "because I am not the medical doctor." (*Id*. at Pp. 17,18).

Under questioning by the respondent's attorney, Ms. Taylor testified that she was not providing an opinion the claimant had suffered a traumatic brain injury, "because I am not qualified to do so." (*Id*. at P.34). She further stated that her opinions and treatment model for the claimant were based on the subjective reporting the claimant decided to share with her. (*Id*. at Pp. 50, 51). She also had no evidence to rebut the statement by Dr. Zolten that the claimant had no cognitive deficits, stating, "I don't test for a cognitive deficit, nor am I qualified to do so." She admitted her opinions and diagnoses were not based on objective findings, and she does not do any testing on her own. (*Id.* at Pp. 53-54).

The following exchange is illustrative of Ms. Taylor's limitations:

> Q: (by Mr. Parrish) Okay. This adjustment disorder with depression, anxiety, panic attacks, you are not providing an opinion that this is causally related to him tripping and falling, with a reasonable degree of certainty, are you?
>
> A: I can only respond to what he -- the information that he

gave me and the information that I have in his record.

Q: Okay.

A: And can say that the time of the intake he met the diagnostic criteria for adjustment disorder mixed.

Q: Okay. But you're not providing a causation opinion as to what has caused --

A: My only opinion is that he reports to me that all of these symptoms were either started or magnified post-accident.

Q: Okay. And that's not really an opinion; it's a --

A: It's a reporting of what he –

Q: -- repetition of what he said. Right?

A: Yes. Uh-huh.

Q: Okay. So, ultimately he's in control as far as what the diagnosis is based on what he reports to you as a clinical professional.

A: Yeah.

(*Id*. at Pp. 63 - 64).

Since the testing and opinions of Tobi Taylor are based solely on the self-serving, subjective complaints of the claimant and not on any measurable objective findings, her testimony should be disregarded.

The record is clear that Dr. Baskin is the physician best suited to determine the history and causes of the claimant's injury. There is clearly nothing in the record that reflects any objective finding of an acute injury to the claimant's brain. The claimant underwent a battery of testing to determine if there is a medical source of his complaints and each revealed that there was no physical injury. The sole findings that would indicate an injury are based on the claimant's own reporting which, is clear from the record, is undisputedly unreliable. There has been no evidence submitted by the claimant to controvert Dr. Baskin's opinion, and he has therefore failed to meet his burden of proving that he suffered a compensable closed-head injury.

Accordingly, for the reasons stated above, I respectfully dissent.

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MICHAEL R. MAYTON, Commissioner