ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOSEPHINE LINKER HART, JUDGE

DIVISION III

CA06-1057

QUICK LAY PIPE CO., INC.,
AIG Claim Services, Inc.
APPELLANTS

April 11, 2007

APPEAL FROM THE ARKANSAS WORKERS' COMPENSATION COMMISSION
[NO. F409390]

V.

WILLIAM E. MORGAN
APPELLEE

AFFIRMED

Appellants argue that substantial evidence does not support the Arkansas Workers' Compensation Commission's decision to award appellee, William E. Morgan, additional temporary total disability benefits and additional medical treatment benefits. We conclude that substantial evidence supports the decision and affirm.

As stated in the Commission's opinion, the parties stipulated that on August 27, 2004, appellee sustained a compensable injury to his neck or cervical spine while employed as a transport driver for appellant Quick Lay Pipe Company. According to appellee, the injury occurred when the right front wheel of a truck he was driving struck a rock, jarring him and causing him to hit his head on interior portions of the truck.

The Commission cited Dr. Randall Carson's conclusion that appellee had cervical strain and occasional ulnar nerve distribution paresthesia. The Commission further observed that Dr. J. Michael Standefer also noted questionable right ulnar neuropathy and indicated

that evaluation with electromyelography (EMG) would be beneficial to more fully and completely assess appellee for the possibility of ulnar neuropathy. Dr. Carson also referred appellee to a pain clinic. Dr. Carson opined that the current treatment plan of administering an EMG and referral to a pain clinic was related to appellee's injury. Dr. Carson further opined that appellee remained in his healing period. Another physician, Dr. Jeffery Pardee, conducted an independent medical evaluation and concluded that appellee had reached maximum medical improvement and did not need further medical treatment.

Appellants argue that appellee failed to present evidence that he was in his healing period and was totally incapacitated from earning wages, and therefore substantial evidence does not support the Commission's finding that appellee was entitled to additional temporary total disability compensation. Our workers' compensation statutes define the "healing period" as "that period for healing of an injury resulting from an accident." Ark. Code Ann. § 11-9-102(12) (Supp. 2005). Temporary total disability is that period within the healing period in which an employee suffers a total incapacity to earn wages. *American Greetings Corp. v. Garey*, 61 Ark. App. 18, 963 S.W.2d 613 (1998). Questions of weight and credibility are within the province of the Commission, and we affirm if the Commission's decision is supported by substantial evidence. *Id.*

Dr. Carson testified during his deposition that appellee remained in his healing period. We hold that Dr. Carson's testimony provided substantial evidence that appellee remained in his healing period. Though appellants cite evidence to the contrary, the weight to be accorded and credibility to be assigned to this evidence was for the Commission to

determine. *Id.* Appellants also assert that there was no objective medical evidence that appellee remained in his healing period. Once the compensability of the claim is established—as stipulated here by appellants—the claimant need not present objective medical evidence that the healing period continues. *Castleberry v. Elite Lamp Co.*, 69 Ark. App. 359, 13 S.W.3d 211 (2000). Appellants further assert that appellee was not totally incapacitated from earning wages. The Commission, however, noted that following his injury, appellee attempted to work for his employer and for another employer but observed that the record did not demonstrate that appellee was able to perform remunerative labor. When an employee is unable to perform remunerative labor with reasonable consistency and without pain and discomfort, his temporary disability is deemed total. *Farmers Coop. v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002). Accordingly, substantial evidence supported the Commission's decision.

Appellants also argue that substantial evidence does not support the Commission's decision that treatment provided by Dr. Carson and Dr. Standefer was reasonably necessary in connection with the admittedly compensable injury that occurred on August 27, 2004. An employer shall provide the medical services that are reasonably necessary in connection with the employee's injury. Ark. Code Ann. § 11-9-508(a) (Supp. 2005). What constitutes reasonably necessary treatment is a fact question for the Commission. *American Greetings Corp.*, *supra.* Here, Dr. Carson opined that the EMG and pain-clinic referral were related to appellee's injury. Again, although there was evidence to the contrary, questions of weight and credibility are within the sole province of the Commission. *Id.* Given this evidence, we

cannot say that the Commission erred in finding the additional medical treatment was reasonably necessary in connection with appellee's compensable injury.

Affirmed.

GRIFFEN and BAKER, JJ., agree.