

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F210175

BRADY RORIE,  
EMPLOYEE

CLAIMANT

MARSHALL MILLING CO., INC.,  
EMPLOYER

RESPONDENT

AG-COMP SIF,  
THIRD PARTY ADMINISTRATOR

RESPONDENT

OPINION FILED JANUARY 26, 2004

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

Claimant represented by HONORABLE THOMAS W. MICKEL, Attorney  
at Law, Conway, Arkansas.

Respondents represented by HONORABLE BETTY DEMORY, Attorney  
at Law, Little Rock, Arkansas.

Decision of the Administrative Law Judge: Reversed.

OPINION AND ORDER

Claimant appeals the June 17, 2003 opinion of the  
Administrative Law Judge finding that he did not sustain a  
compensable injury to his back.

Claimant has the burden of proving by a  
preponderance of the evidence that he is entitled to  
compensation. Jordan v. Tyson Foods, Inc., 51 Ark. App.  
100, 911 S.W.2d 593 (1995). Questions of credibility and  
the weight and sufficiency to be given evidence are matters  
within the province of the Workers' Compensation Commission.  
Swift-Eckrich, Inc. v. Brock, 63 Ark. app. 118, 975 S.W.2d  
857 (1998). After our de novo review of the entire record,

we find that claimant has met his burden of proof and, accordingly, reverse the opinion of the Administrative Law Judge.

Claimant presented credible testimony that on August 29, 2002, he injured his back while lifting 50-pound sacks of feed. It is undisputed that claimant immediately reported the incident to his supervisor. The employer authorized claimant to go to the doctor and claimant presented to Dr. Larry Jennings on August 30, 2002. The handwritten notes concerning this visit document a positive straight leg raising test and positive reflex changes. In the typewritten report of this visit, Dr. Jennings also documented the presence of paraspinal muscle spasms.

Respondent argues, and the Administrative Law Judge found, that claimant failed to establish a compensable injury with medical evidence supported by objective findings, as required by Ark. Code Ann. § 11-9-102(4)(D) (Supp. 2003). It is not necessary for the Commission to determine whether reflex changes are objective findings in this particular case. Muscle spasms are clearly sufficient objective findings to support an award of benefits.

Estridge v. Waste Management, 343 Ark. 276, 33 S.W.3d 167 (2000).

Respondent erroneously intimates that the typewritten report was made several weeks and even months after the actual visit or after knowledge that respondent was controverting the claim. A close and impartial review of the evidence will not support this conclusion. Granted, Dr. Jennings' dictation was not transcribed until September 11, 2002, which we incidentally point out is only 12 days after the visit. Much more important, however, is the fact that this note was actually dictated on August 30, 2002, the same day as the office visit. Thus, respondent is mistaken in asserting that Dr. Jennings did not document muscle spasms until after claimant realized respondent was controverting his claim. Further, we point out that Dr. Jennings also dictated and had transcribed the notes for each of claimant's visits with him. On each occasion, Dr. Jennings dictated the clinic note on the day of the visit.

Based on claimant's credible testimony about the work-related accident, the consistent histories he provided to the treating physicians, the above evidence that Dr. Jennings documented the presence of muscle spasms on claimant's first visit, plus the absence of any evidence to the contrary, we find that claimant has proven by a preponderance of the evidence that he sustained a compensable back injury which is established by medical

evidence supported by objective findings and is causally related to his employment.

We also find that claimant is entitled to benefits for temporary total disability from August 30, 2002 to February 13, 2003. Temporary total disability for unscheduled injuries is that period within the healing period in which claimant suffers a total incapacity to earn wages. Ark. State Highway & Transportation Dept. v. Breshears, 272 Ark. 244, 613 S.W.2d 392 (1981). The healing period ends when the underlying condition causing the disability has become stable and nothing further in the way of treatment will improve that condition. Mad Butcher, Inc. v. Parker, 4 Ark. App. 124, 628 S.W.2d 582 (1982).

Respondent erroneously contends that the medical evidence will not support an award of benefits for temporary total disability. Dr. Jennings took claimant off work beginning August 30, 2002, the first office visit. Dr. Jennings' reports repeatedly indicate that claimant is not to return to work until after his condition is evaluated by a neurosurgeon. When respondent wrongfully controverted this claim, claimant was unable to be promptly evaluated by a neurosurgeon. As a result of this controversion, claimant initiated the process of obtaining free medical treatment at UAMS. Claimant credibly testified that he was not approved

for the program and could not see a neurosurgeon until on or about January 30, 2003. On February 13, 2003, Dr. Williams, a neurosurgeon at UAMS, released claimant to return to work without the need for additional treatment from a neurosurgical standpoint. Based on this evidence, we find that claimant has proven by a preponderance of the evidence that he remained within his healing period and was totally incapacitated to earn wages from August 30, 2002 to February 13, 2003.

There is really no dispute about whether the medical services provided so far have been reasonably necessary, and respondent is liable for the expenses of these services, as well as any future reasonably necessary services.

Accordingly, we reverse the opinion of the Administrative Law Judge finding that claimant did not sustain a compensable injury. Claimant has met his burden of proof by a preponderance of the evidence. Additionally, we find that claimant is entitled to benefits for temporary total disability from August 30, 2002 to February 13, 2003. 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. 2002).

Since the claimant's injury occurred after July 1, 2001, the claimant's attorney's fee is governed by the provisions of Ark. Code Ann. § 11-9-715 as amended by Act 1281 of 2001. Compare Ark. Code Ann. § 11-9-715 (Repl. 1996) with Ark. Code Ann. § 11-9-715 (Repl. 2002). For prevailing on this appeal before the Full Commission, claimant's attorney is hereby awarded an additional attorney's fee in the amount of \$500.00 in accordance with Ark. Code Ann. § 11-9-715(b) (Repl. 2002).

IT IS SO ORDERED.

\_\_\_\_\_  
OLAN W. REEVES, Chairman

\_\_\_\_\_  
SHELBY W. TURNER, Commissioner

Commissioner McKinney dissents.