

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F406114

JAMES D. MITCHELL,
EMPLOYEE

CLAIMANT

LITTLE ROCK ELECTRICAL
CONTRACTORS, INC.,
EMPLOYER

RESPONDENT

VALLEY FORGE INSURANCE CO.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED NOVEMBER 30, 2006

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

Claimant represented by the HONORABLE GREG GILES, Attorney
at Law, Texarkana, Arkansas.

Respondents represented by the HONORABLE FRANK NEWELL,
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Reversed.

OPINION AND ORDER

The respondents appeal an administrative law judge's
opinion filed May 1, 2006. The administrative law judge
found that the claimant proved a psychiatric evaluation was
reasonably necessary. The administrative law judge also
found that the claimant proved he was entitled to temporary
total disability "from June 10, 2004, through June 29, 2004,
and from December 11, 2004, through a date yet to be
determined." After reviewing the entire record *de novo*, the
Full Commission reverses the opinion of the administrative

law judge. We find that the claimant did not prove he was entitled to a psychiatric evaluation or additional temporary total disability compensation.

I. HISTORY

James Douglas Mitchell, age 34, reported to a physician in December 2002 that he had been having "some tremor and shakiness." An examination indicated that the claimant was "having slight tremor most noticeable in his hands and speech." Also in December 2002, Dr. Cathryn J. Gonzales noted "psoriatic appearing skin rash." Dr. Gonzales assessed "psoriasis" in January 2003.

The claimant testified that he had worked previously for Little Rock Electrical Contractors. The record includes a Notice Of Rehire showing a date of rehire of March 17, 2004. The parties stipulated that the claimant sustained a compensable injury on April 21, 2004. The claimant testified on direct examination:

Q. How did you get electrocuted or why did you get electrocuted?

A. Basically, we were working in a Lowe's that had been worked on before....Mr. Mize had pushed the fish tape down to a four-square box down there.

Q. What's a fish tape?

A. It's a tape that we use to pull wire through. So, he pushed the fish tape down to a four-square box, and it runs through the pipe and down to that box.

Q. To an electrical box?

A. To a junction, electrical box....I went to reach up to do it and it snatched me up. I could feel it in my back, my knee and my foot....It just snatched me up like a magnet. And when it did, it sent the shockwave through me.

Q. Do you know how many volts of electricity that would have been?

A. About 440 or 480, something like that....

The claimant sought emergency treatment on May 5, 2004 with the admitting diagnosis, "R thumb pain, electrocuted." A physical examination on that day indicated that the claimant had a blister on his right thumb pad. Additionally, a nursing assessment indicated that the claimant's right thumb was swollen, with redness around the nail.

Dr. Scott Willard Nagely reported on May 6, 2004:

This is a 32-year-old male who works as an electrician and about 2-1/2 weeks ago he was shocked by a 440 volt electrical line and suffered burns to his left index finger and thumb and also to his right thumb. He reports that his hands have been steadily improving and he has had no pain in the right thumb or hand until yesterday he noticed some swelling in his right thumb and progressively gotten more painful. He reports

that tonight he squeezed the thumb and got a expressed a large amount of pus from the thumb. Then tonight he noticed a red streak up his forearm and about half way up his upper arm. There has been no fevers or chills although he does have some mild general malaise.... On further examination of his right upper extremity, he has evidence of a soft tissue abscess on the radial aspect of his right thumb with lymphangitis on the anterior surface of his forearm and upper arm. He does have a fluctuant area on the distal thumb. There is no bony tenderness and he is able to flex and extend the thumb. He does not have clinical evidence of septic arthritis. Neurologically he is moving all extremities normally and acting appropriately.... There is no clinical evidence of necrotizing fasciitis or septic arthritis and he is not clinically septic.

Dr. Nagely gave the following clinical impression: "1. Acute right thumb abscess. 2. Lymphangitis to the right arm. 3. Digital block. 4. Incision and drainage."

The claimant's employment was terminated on May 14, 2004 for the reason, "Voluntary quit - see note." The record includes the following note dated May 17, 2004: "Please fill out termination slip on Doug. He quit Friday the 14th from Job #A-1041. He left a message at the front desk of the hotel, that he had a family emergency, but he made no attempt to call Juan or me."

The claimant sought chiropractic treatment beginning June 10, 2004; the record indicates that the claimant

complained of pain in his left thumb and low back, which pain he attributed to the electric shock at work.

Dr. J. Rob Butler, D.C., noted on June 10, 2004, "Muscular trigger points were found in the left lower lumbar region....James has been advised not to return to work at this time....James has been advised that he should be resting at home."

The claimant began a lengthy series of chiropractic visits.

On June 25, 2004, Dr. Patrick D. Antoon took the claimant off work. The parties stipulated that the respondents began paying temporary total disability compensation on June 30, 2004.

Dr. Lon Burba examined the claimant on July 21, 2004; Dr. Burba's letterhead indicated that he was a psychiatric and neurological specialist. Dr. Burba gave the following impression: "1. Tremor. 2. Apparent brain injury." Dr. Burba planned additional diagnostic testing. An MR of the claimant's brain was taken on August 5, 2004, with the following impression: "1. Normal MRI of the brain. 2. Chronic bilateral maxillary sinusitis."

Dr. Burba gave the following impression on an Electrocephalogram Report dated September 9, 2004: "This is a technically difficult record characterized by large amounts of muscle artifact. Also noted was beta spindling suggesting medication effect. Is this patient on benzodiazepines? A rarely occurring left temporal sharp wave was seen suggesting an area of focal cortex irritation which is a non-specific finding. An imaging study of the brain is recommended."

The record indicates that Dr. A.J. Zolten performed "neuro-psych" testing of the claimant on September 9, 2004 and stated, "I would recommend that this patient be placed on a medication to adequately treat his depression and PTSD."

The parties stipulated that the respondents paid temporary total disability through December 10, 2004.

Wendy C. Cox, RPT, wrote the following on December 20, 2004: "This letter is to inform you that James D. Mitchell has been overall non-compliant with his scheduled physical therapy. Mr. Mitchell began Physical Therapy on November 22, 2004 and since that time has only been able to keep 5 appointments citing various reasons from being sick, to

grandmother passing away, to being too tired, to having truck trouble in Mt. Pleasant TX. Please notify us of any changes to be made in this patient's status."

Dr. Barry D. Baskin performed an Independent Medical Evaluation on January 18, 2005:

He has an approximately 5 x 5 mm scar on the right distal thumb. He has dystrophic nails on all the toes on the left foot. He has multiple patches of psoriasis on all extremities and also on the truck (sic). He has a variable tremor in both hands. By variable, I mean the patient's tremor at times appears to be quite coarse and at times it (sic) almost nonexistent....He has a brownish discoloration at the base of the toes on the left foot. This looks like an area where there was some scar and some hyperpigmentation. He states that this is where there was an exit wound from the electricity. He has a lot of psoriatic type rash over the right knee and in an area where he says there was another exit wound, I cannot see it because there is psoriasis there....

Mr. James Mitchell is a 33 year old gentleman who reportedly had an electrical injury on 4/22/04. There is inconsistency in the story with regard to what the patient says and what the worker's comp paperwork says....

It is my impression that this gentleman did have some sort of an electrical injury. The extent of that injury is unclear at this point....I have never seen anybody that developed this type of dermatologist manifestation from an electrical injury....I do not think that this gentleman needs another neuropsychological evaluation at this time. Based on the April 2004 injury, I do not think that this gentleman has reached maximum medical improvement....

Dr. Baskin recommended a variety of additional diagnostic testing and a functional capacity evaluation.

The claimant underwent a Functional Capacity Evaluation on January 31, 2005, and the following conclusion resulted: "Mr. Mitchell underwent functional evaluation this date with unreliable results for effort. Mr. Mitchell put forth inconsistent effort and demonstrates many inconsistencies with inappropriate illness responses. Mr. Mitchell demonstrates the ability to perform work at least at the LIGHT Physical Demand Classification as determined through the Department of Labor for an 8-hour day."

The claimant underwent a Nerve Conduction Study Upper Extremity on February 11, 2005. Dr. Julia M. McCoy gave the following impression: "Chronic generalized poly radiculo neuropathy, RUE > LUE."

Dr. J. Rob Butler, D.C., noted on March 10, 2005, "I advised Doug to speak with Dr. Antoon or workers compensation case worker about a possible psychological work up. Doug does not seem to be progressing as well as I thought he would. I don't feel tht (sic) he will be able to return to work anytime in the near future."

The record indicates that a dermatologist at UAMS Medical Center wrote the following on or about April 13, 2005: "We can not say whether his electrical injury is related to his psoriasis onset. It will be impossible to determine the causality."

Dr. Baskin corresponded with the respondents' attorney on April 14, 2005:

I am in receipt of your letter requesting information on James D. Mitchell. I have reviewed Dr. McCoy's electrodiagnostic studies. It appears to me that this gentleman does have some abnormalities in the muscles of each upper extremity based on his electromyography. He does not have any abnormalities with regards to substantial peripheral neuropathy. There is no frank evidence, by review of the numbers, for carpal tunnel syndrome or cubital tunnel syndrome. I don't think that, based on these nerve conduction studies, Mr. Mitchell needs an orthopedic evaluation to address any carpal tunnel related issues since he does not have any frank evidence of carpal tunnel syndrome.

Dr. Zolten had recommended therapy for symptoms of post traumatic stress disorder. Dr. Zolten also felt like the patient had depression in conjunction with PTSD.

I do not think, based on the patient's current condition with the issues of possible depression, PTSD, and nerve root irritability consistent with denervation of the cervical nerve roots, that Mr. Mitchell has reached maximum medical improvement at this time.

With regard to the abnormal EMG needle exam, these findings could be seen with an electrical injury. I have had many electrocution injuries in my practice over the years and have seen peculiar denervation type potentials in patients that have experienced electrical injury. The good news is that these conditions usually do get better and may not result in chronic impairment. I think a psychiatric evaluation probably would be in this gentleman's best interest given Dr. Zolten's findings. I think that the neurologic findings could just be watched. This would include a tremor, which the patient has. There is no treatment for polyradiculopathy related to electrocution injury except to give the patient more time. Based on that, again, I do not think Mr. Mitchell is at maximum medical improvement. I would certainly be happy to see him back in the future and see how he progresses. As I have stated above, I have seen many electrocution injury patients over the years. Dr. Julia McCoy is going to call me tomorrow and we will review the electrodiagnostic studies together....

If you have any questions regarding this case, please do not hesitate to contact me. Again, I think it would be reasonable for me to see Mr. Mitchell back in follow up to better assess his neurologic findings and also to monitor his psychiatric condition. It would be reasonable, I think, to have this gentleman seen by a psychiatrist in the Texarkana area and have Dr. Zolten's records forwarded to him.

Dr. Baskin stated on April 25, 2005:

I spoke at length with Dr. Julia McCoy last week regarding Mr. Mitchell's EMG and nerve conduction studies. Dr. McCoy indicated to me that she feels Mr. Mitchell has a diffuse polyradiculopathy or radiculitis in response to his electrical injury....

This gentleman, in my opinion and in the opinion of Dr. McCoy, does not need an orthopedic referral at this time. He does not have any surgical problems....

Mr. Mitchell was also noted to have symptom magnification and was unreliable with his testing on functional capacity evaluation with functional testing centers. His tremor is quite variable and I am not 100% sure that there is not some symptom magnification associated with that as well. I do, however, believe that this gentleman did get an electrical shock and that he does have some injury. His tremor doesn't look physiologic to me and I think that he does need a psychological evaluation.

Dr. Baskin noted on April 26, 2005, "I think Mr. Mitchell could be released at this time back to light duty work since he was able to perform at least at that level in his FCE. I do not think he is ready physically or emotionally to go back to his previous work, however."

Dr. Baskin corresponded with the respondents' attorney on May 31, 2005:

I am in receipt of your letter dated May 24, 2005 with further information regarding James D. Mitchell. I have reviewed your enclosed notes from the Collum and Carney Clinic in Texarkana. One note dated 12/13/02, indicates that Mr. Mitchell did indeed have a rash that is described as the same type of rash that he had when I saw him, as well as a tremor and brisk reflexes. He also complained of heart palpitations....

Based on review of these medical records, it is apparent that this gentleman has had the shaking tremulous type movements for some time preceding his reported electrical injury. He has had the rash preceding the reported electrical injury. He has had chest pain and palpitations preceding the reported work related injury.

Based on review of these new records, in addition to review of the patient's EMG nerve conduction studies, as well as his functional capacity evaluation dated January 31, 2005, it appears that this gentleman's tremor, palpitations, nervousness, anxiety and rash on all extremities was all preexisting his reported electrical injury on 4/21/04. He was inconsistent with his functional capacity evaluation. His nerve conduction studies were all normal. He could have had possible radiculopathy or denervation potentials secondary to electrocution, although it is impossible to say if any of the findings on EMG and nerve conduction studies were definitely related to a reported electrical injury.

Mr. Mitchell stated that the hand tremors and the rash both developed after the work related electrical injury. Based on the fact that I think that this gentleman is unreliable with his history and was unreliable with his functional capacity evaluation, it would be my opinion that we cannot base any definite diagnoses on his reported work injury. I think Mr. Mitchell is at a point of maximum medical improvement. I do not believe based on his previous history of anxiety and tremor that we can say unequivocally that he has PTSD. It would be my opinion that this gentleman has reached a point of maximum medical improvement. It is my opinion that he is not disabled from medium duty work and should be returned to work as soon as possible. I do not feel that further intervention with regards to psychology or psychiatric management is the responsibility of his employer given his

preexisting problems. Treatment for his rash should not be the responsibility of his employer either....

The claimant was admitted to Wadley Regional Medical Center on or about August 18, 2005. The claimant complained of "blood in stool and in vomitus." The claimant was discharged on August 21, 2005 with the following diagnoses: "1) Atypical chest pain. 2) Associated febrile illness with E coli urinary tract infection. 3) Human immunodeficiency virus with CD4 count of 19. 4) Chronic hepatitis B & C. 5) Cirrhosis of liver with endstage liver disease. 6) Post traumatic stress disorder, status post electrocution. 7) Neutropenia with granulocytosis. 8) Coagulopathy albumnia secondary to endstage renal disease."

Dr. Antoon informed the claimant's attorney on October 12, 2005, "It is my medical opinion within a reasonable degree of medical certainty that Mr. Mitchell's tremors are a result of his work related injury and also an aggravation of his underlying neurological problems."

On November 3, 2005, Dr. Baskin again corresponded with the respondents' attorney:

I am in receipt of a letter from you dated November 1, 2005 requesting opinions about the case of Mr. James D. Mitchell. I have been

forwarded medical records from Mr. Mitchell's hospitalization at Wadley Regional Medical Center in Texarkana, Texas back in August 2005....

Dr. Antoon's notes are also reviewed. A 10/3/05 progress note listed a diagnosis of tremors post electrocution, neuritis of the hands and feet, psoriasis, and hepatitis. He further states that he thinks Mr. Mitchell's problems now are all related to his work, except for hepatitis. He thinks his tremors are post electrocution.

It is obvious from review of these records that Mr. Mitchell is in a terrible state of health. In my opinion, I do not believe his tremors were caused by the electrocution injury. His hepatitis, cirrhosis, HIV and anxiety about his medical condition could cause him to have tremulousness. I have seen many electrocution injuries over the course of my practice and I have never seen anybody with electrocution injury develop a tremor. Mr. Mitchell did not have any evidence of neuritis on Dr. McCoy's nerve conduction studies. Nerve conductions were within normal limits. In my opinion, Mr. Mitchell does not have any condition related to his April 2004 electrical accident requiring him to be medicated with Morphine. Dr. Antoon's October 3, 2005 form 3 states that Mr. Mitchell is taking Morphine. From review of the records that we have gone over previously, it appears to me that Mr. Mitchell had skin lesions consistent with psoriasis prior to his electrocution injury.

Mr. Mitchell has little in the way of objective findings to substantiate any residual affect from his reported electrocution injury in April 2004. As I have stated above, this gentleman is unfortunately in very poor medical condition. His hepatitis and psoriasis predate his April 2004 electrical accident. No doubt this gentleman has a high level of anxiety knowing that he has at least 2 terminal disease processes going on

including his hepatitis and associated cirrhosis of the liver, as well as his HIV infection. Hepatitis and cirrhosis have been known to cause abnormal neurologic exams and abnormal muscular movements. HIV infection is well known to cause neurologic disturbances. The neurologic system is frequently attacked by HIV infection.

In summary, I don't think that there is any conclusive evidence that any of Mr. Mitchell's symptoms outlined by Dr. Antoon were caused by his reported electrocution injury.

A pre-hearing order was filed on December 5, 2005. The claimant contended, among other things, that he "should be awarded temporary total disability benefits from April 21, 2004 through June 29, 2004, and from December 11, 2004 to a date yet to be determined; that additional medical treatment is reasonable, necessary, and related to his compensable injury[.]"

The respondents contended that they denied liability "for medical care for claimant's psoriasis; that they deny that claimant has a compensable condition requiring treatment with narcotic medication; that they deny that claimant's tremors are the result of his work-related injury and deny liability for medical care for the tremors; that much of claimant's symptomatology results from physical conditions stemming from kidney and end-stage liver disease,

not his compensable accident; and that the claimant is not temporarily totally disabled from working as a result of his compensable electrical accident."

The parties agreed to litigate the following issues: "Whether the claimant is entitled to additional temporary total disability benefits; whether additional medical treatment is reasonably necessary in connection with the compensable injury; and controversion and attorney's fees."

On December 7, 2005, Dr. Butler informed the claimant's attorney, "Mr. Mitchell has not been seen in my office since March 10, 2005 and at that point he continued to experience the same symptoms. I had recommended on his last visit that he speak with Dr. Antoon about a psychological evaluation due to the obvious depressed state that he was in, problems that he apparently was having at home and all the aspects of dealing with his physical problems....I hope that he did follow through with the psychological evaluation and is doing better with his overall physical health at this time."

A hearing was held on February 16, 2006. At that time, the claimant contended that he was entitled to temporary total disability from May 22, 2004 through June 29, 2004,

and from December 11, 2004 through a date yet to be determined.

Scotty Lee Mize, electrician for the respondent-employer, testified that he was working with the claimant on the date of accident. The respondents' attorney questioned Mr. Mize:

Q. Tell us what happened.

A. We was putting another circuit in an existing conduit that was thirty-feet long and it wasn't vertical....

Q. How strong was the current that was going through the wires in this conduit?

A. 120 volts.

Q. Are you sure it was 120 volts and not as he says 440 or whatever?

A. No, 440 is the voltage of the main feed of the store itself on a three phase. So, all we're doing is a single phase, 120 volts.

Q. What happened as far as you know?

A. I was feeding in the wires we was installing and he was pulling on the metal fish tape and he knocked a wire nut off in an existing joint that was in the box....

Q. Were you situated so you could see him?

A. No. No, I couldn't.

Q. So, how, did it come to your attention that he had shocked himself?

A. The wires quit moving. You know, he was pulling them. It stopped and just a few seconds later he was up there in the front screaming over all of the store and everything....And I observed his hands. He didn't have no contusions or anything, no cuts. I didn't see any abrasion on him. So, I went to the box and the wire nut fell of the two joints of wire....

Q. Did you replace it?

A. I put it back on there.

Near the end of the hearing, at the prompting of the administrative law judge, the claimant's attorney essentially contended that the claimant had sustained a compensable mental injury. The respondents denied liability for a mental injury.

The administrative law judge found, in pertinent part:

3. The claimant has proven by a preponderance of the evidence that a psychiatric evaluation is reasonably necessary in connection with the compensable injury....

6. The claimant has therefore proven ... that he is entitled to temporary total disability benefits from June 10, 2004, through June 29, 2004, and from December 11, 2004, through a date yet to be determined.

7. A preponderance of the evidence establishes that the claimant earned an average weekly wage of \$488.43, entitling him to a compensation rate of \$326 for total disability benefits.

The respondents appeal to the Full Commission.

(Neither party on appeal briefs finding No. 7.)

II. ADJUDICATION

A. Compensability

The parties stipulated that the claimant sustained a compensable injury on April 21, 2004. The basis of the claimant's claim for additional benefits was his contention that he was entitled to additional medical treatment and temporary total disability compensation. Near the conclusion of the hearing, the administrative law judge (ALJ) asked the claimant's attorney, "[Do I] need to make a decision on whether or not the claimant's sustained a compensable mental injury?" "I suppose that would have to be accurate," counsel replied. The respondents did not object to including this new issue of compensability at hearing. The ALJ found, "The claimant has proven ... that a psychiatric evaluation is reasonably necessary in connection with the compensable injury." The ALJ did not clearly indicate whether the claimant had proved he sustained a compensable mental injury, or whether the award was for additional treatment pursuant to Ark. Code Ann. §11-9-508(a).

In any event, Ark. Code Ann. §11-9-113 provides, in pertinent part:

(a) (1) A mental injury or illness is not a compensable injury unless it is caused by physical injury to the employee's body, and shall not be considered an injury arising out of and in the course of employment or compensable unless it is demonstrated by a preponderance of the evidence[.]

(2) No mental injury or illness under this section shall be compensable unless it is also diagnosed by a licensed psychiatrist or psychologist and unless the diagnosis of the condition meets the criteria established in the most current issue of the Diagnostic and Statistical Manual of Mental Disorders.

(b) (1) Notwithstanding any other provision of this chapter, where a claim is by reason of mental injury or illness, the employee shall be limited to twenty-six (26) weeks of disability benefits.

The instant claimant did not prove he sustained a mental injury or illness caused by physical injury to his body. The parties stipulated that the claimant sustained a compensable injury on April 21, 2004. The medical record from May 6, 2004 demonstrates that the claimant was diagnosed as having an acute right thumb abscess, as well as lymphangitis of the right arm. We find that the thumb abscess was of tenuous causal connection to the compensable injury. There is no probative evidence demonstrating that the finding of lymphangitis, viz., infection of the lymph nodes, was in any way related to the compensable injury. Nor does the record indicate that the claimant's subsequent

reported symptoms in his left hand or low back were related to the compensable injury.

The claimant did not prove that he sustained a mental injury or illness pursuant to Ark. Code Ann. §11-9-113. The claimant asserts on appeal that he is entitled to a psychological or psychiatric evaluation to determine whether or not he sustained a mental injury or illness. The claimant cites *Terrell v. Arkansas Trucking Serv., Inc.*, 60 Ark. App. 93, 959 S.W.2d 70 (1998), in which case the Court of Appeals held that the claimant should have been granted a psychological evaluation. The Court determined, "the claimant has been only superficially evaluated by a psychotherapist, who interviewed appellant in connection with a work-hardening program, and by a psychiatrist who talked to him only briefly. We emphasize that our decision affords appellant only a psychological evaluation by a licensed psychiatrist or psychologist to determine if his mental problems are the result of the injuries he sustained in the accident."

In the instant matter, however, the claimant has already been evaluated by two mental health professionals. Dr. Burba, a psychiatric and neurological specialist,

thoroughly examined the claimant on July 21, 2004. Dr. Zolten, a neuropsychologist, consulted with the claimant on September 9, 2004. The Full Commission is unable to find that the instant claimant proved he was entitled to yet another evaluation by a third mental health specialist. We further recognize Dr. Zolten's recommendation that the claimant be prescribed medication for depression and post-traumatic stress disorder. There is simply no probative evidence of record demonstrating that the claimant's depression or "post-traumatic stress disorder" are in any way related to the April 21, 2004 compensable injury. We again note that the claimant was diagnosed as having a right thumb abscess on May 6, 2004. The record does not demonstrate that the claimant's pain complaints beginning on June 10, 2004 were in any way the result of the compensable injury. Dr. Baskin stated in November 2005 that the claimant "has a high level of anxiety knowing that he has at least 2 terminal processes going on including his hepatitis and associated cirrhosis of the liver, as well as his HIV infection." None of these processes described by Dr. Baskin were in any way related to the claimant's compensable injury.

The Full Commission therefore finds that the claimant did not prove he sustained a mental injury or illness pursuant to Ark. Code Ann. §11-9-113. We reverse the administrative law judge's decision that the claimant is entitled to yet another psychiatric evaluation at the respondents' expense.

B. Medical Treatment

The employer must 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). The claimant must prove by a preponderance of the evidence that he is entitled to additional medical treatment. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). What constitutes reasonably necessary medical treatment is a question of fact for the Commission. *Dalton v. Allen Eng'g Co.*, 66 Ark. App. 201, 989 S.W.2d 543 (1999).

In the present matter, the Full Commission finds that the claimant did not prove he was entitled to additional medical treatment. The parties stipulated that the claimant sustained a compensable injury on April 21, 2004. The claimant testified that he was electrocuted with 440 volts

that day. The claimant's supervisor credibly disputed the claimant's account of events, testifying that the most voltage going through the wires was 120 volts. In any event, the claimant may have sustained a brief electrical shock at work. However, that incident did not give rise to the claimant's subsequent claims of back pain, a mental injury, "flashbacks," and so on. When the claimant decided to seek medical treatment, on May 5, 2004, physical examination showed a blister on the claimant's right thumb pad. Based on the record, that was the extent of the claimant's physical injuries. The record does not corroborate the claimant's testimony that there were "exit wounds" in the claimant's left hand or knee.

The claimant was diagnosed as having "acute right thumb abscess" on May 6, 2004. The preponderance of evidence does not demonstrate that the chiropractic treatment sought by the claimant was in any way causally related to the compensable injury. Diagnostic testing of the claimant's brain and lumbar spine was essentially normal. There was some inconsistency in the record regarding whether electrodiagnostic testing revealed any abnormalities. In February 2005, Dr. McCoy reported a "chronic generalized

polyneuropathy" in the claimant's upper extremities bilaterally. Even if this finding was considered to be abnormal, the preponderance of evidence does not show that this condition was causally linked to the April 2004 specific incident.

The Full Commission attaches significant weight to the findings of Dr. Baskin. The entirety of Dr. Baskin's studies clearly show that there was no organic or physical basis for the claimant's physical or mental symptoms. Dr. Baskin grew increasingly skeptical of the claimant's story, especially after he was given a complete medical history by the respondents. There is no evidence to support the claimant's contention that his tremors were caused by electric shock. The claimant already had tremors no later than December 2002. Nor was the compensable injury the cause of the claimant's skin rash or low back pain. The evidence before us also does not show that the compensable injury aggravated any pre-existing physical or mental condition. Nor does the preponderance of evidence show that the compensable injury was in any way causally related to the claimant's emergency hospital admission on August 18, 2005.

C. Temporary Disability

The administrative law judge found that the claimant was entitled to temporary total disability compensation "from June 10, 2004, through June 29, 2004, and from December 11, 2004, through a date yet to be determined." The Full Commission notes that the administrative law judge relied on the legal standard for non-scheduled injuries announced in *Ark. State Hwy. Dept. v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981). This was error. The medical records show that the claimant had a blister on his right thumb following the April 2004 specific incident. Assuming this blister was caused by the electrical accident (the causal link is tenuous), this was a scheduled injury. An employee who has suffered a scheduled injury is to receive temporary total disability compensation during his healing period or until he returns to work. Ark. Code Ann. §11-9-521; *Wheeler Constr. Co v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The healing period is that period for healing of the injury which continues until the employee is as far restored as the permanent character of the injury will permit. *Nix v. Wilson World Hotel*, 46 Ark. App. 303, 879 S.W.2d 457 (1994). If the underlying condition causing

the disability has become more stable, and if nothing further in the way of treatment will improve that condition, the healing period has ended. *Id.* Whether an employee's healing period has ended is a question of fact for the Commission. *Ketcher Roofing Co. v. Johnson*, 50 Ark. App. 63, 901 S.W.2d 25 (1995). Temporary disability cannot be awarded after a claimant's healing period has ended. *Elk Roofing Co. v. Pinson*, 22 Ark. App. 191, 737 S.W.2d 661 (1987).

In the present matter, the Full Commission finds that the claimant's healing period did not extend beyond May 14, 2004, the date the claimant voluntarily quit his job with the respondents. There is no indication that the effects of the claimant's thumb blister extended beyond that date. Substantial evidence before the Commission does not demonstrate an injury to any other part of the claimant's body, even assuming that the thumb blister was caused by the electric shock in April 2004. The claimant did not prove he was entitled to additional temporary total disability compensation.

Based on our *de novo* review of the entire record, the Full Commission finds that the claimant did not prove he was

entitled to an additional psychiatric evaluation or additional medical treatment at the respondents' expense. Nor did the claimant prove that he was entitled to additional temporary total disability compensation. We therefore reverse the opinion of the administrative law judge. This claim is denied and dismissed.

IT IS SO ORDERED.

OLAN W. REEVES, Chairman

KAREN H. MCKINNEY, Commissioner

Commissioner Turner dissents.

DISSENTING OPINION

I must respectfully dissent from the Majority's decision finding that the claimant did not sustain a compensable mental injury and denying all requested benefits. After reviewing the record, I find that the claimant has shown that he sustained a compensable mental injury and that he is entitled to receive the recommended psychiatric treatment. Specifically, I note that it is

undisputed the claimant has sustained injuries due to being electrocuted. Likewise, he has had diagnostic testing in the form of an EMG which returned as abnormal. While the claimant has suffered from HIV and hepatitis, the medical records suggest that the claimant's need for a psychiatric evaluation is to determine the reason for his depression and other symptoms. As reasoned by the Administrative Law Judge, pursuant to the language of Terrell v. Arkansas Trucking Serv., Inc., 60 Ark. App. 93, 959 S.W.2d 70 (1998), the claimant should be awarded treatment in the form of the psychological test. Finally, I find that the claimant has proven by a preponderance of the evidence that he is entitled to receive temporary total disability benefits.

The only treatment that was awarded by the Administrative Law Judge was a psychiatric evaluation. As noted by the Administrative Law Judge, both Dr. Zolton and Dr. Baskin recommended such a test based on the result of an EMG. Though Dr. Baskin later changed his opinion, I am still persuaded that the claimant's tremors, depression, and Post Traumatic Stress Disorder are directly related to the compensable injury.

Prior to the compensable injury there is no evidence the claimant had never been treated for depression, Post Traumatic Stress Disorder, or any other mental condition. Likewise, after the incident in question, the claimant reported having flashbacks of the electrocution, tremors, and symptoms consistent with those diagnosed by Dr. Zolton. In fact, on the day of the claimant's first treatment, he was noted to have "tremulous" hands. Additionally, as early as June 2004, the claimant was suspected to have neurological involvement related to the electrocution. Indeed, when Dr. Burba treated the claimant, he diagnosed him with an apparent brain injury and the claimant's EEG test returned as abnormal.

Dr. Zolton also believed the claimant suffered depression and PTSD from the incident. An e-mail from the respondents claim manager discusses Dr. Zolton's findings. It noted the claimant appeared to be suffering from memory and cognitive problems. She further indicated that the claimant appeared to be suffering from depression and from PTSD and recommended medication and treatment for such, including another neurological test. She opined,

While these findings are thought to be a likely result of his accident. (sic) They are certainly exacerbated by his current psychiatric state which is very poor, particularly problematic are though (sic) is young man's significant post traumatic stress disorder with poor sleep and at least apparently at present no treatment.

Additionally, while Dr. Baskin later changed his mind regarding the reason for the claimant's symptoms, on April 14, 2005, he noted that the claimant's EMG findings were consistent with that of an electrical injury. He further indicated that he did not believe the claimant was at MMI and agreed with the recommendations set forth by Dr. Zolton.

While the Majority finds that the claimant did not sustain a mental injury and that his depression was not causally related to the work-related injury, I find that the evidence refutes such a finding. The Majority finds the claimant's condition is not causally related to the compensable injury, I find that to make such a conclusion would require resorting to impermissible conjecture and speculation. Specifically, the Majority finds that the claimant suffers from HIV and Hepatitis, both of which they contend would cause the claimant's neurological defects and

depression. In making this finding, the Majority relies on Dr. Baskin's opinion that the claimant's diseases could cause the symptoms suffered by the claimant and contend that the claimant failed to disclose his condition.

I note first, that the claimant had no history of being diagnosed with or needing treatment for PTSD or depression until after the time he was shocked. Though the claimant was treated in December 2002 for tremors and shakiness, he was positive for a low-grade fever and for having a "chilled" feeling. Dr. Baskin, in his deposition, testified that having tremors would be consistent with having a fever. As none of the other medical reports prior to the work-related accident mention the claimant suffering from tremors, I find that his fever was likely the cause for the tremors at that time.

Additionally, the claimant set forth a great deal of testimony indicating that he performed manual labor jobs that required a great deal of dexterity in his hands. The claimant testified that he would be unable to perform these jobs had he been suffering from tremors in his hands. There is no dispute to this testimony and there is no indication the claimant ever had difficulty in performing any of the

jobs requiring fine motor skills with his hands. In fact, the respondents' witness Scott Mize, testified that he did not observe the claimant with tremors either before or after the injury. As such, I find that he did not suffer from tremors prior to the compensable injury.

The respondent also argues that the claimant's terminal diseases have caused his depression. While I certainly find it logical that such knowledge would contribute to the claimant's depression, I note that it appears the claimant was not diagnosed with HIV until after his initial treatment with Dr. Baskin and Dr. Zolton. Likewise, it is unclear if the claimant knew the extent of his liver condition when treated by Dr. Baskin or Dr. Zolton. Furthermore the claimant reported having flashbacks of his work-related accident, which would seemingly be unrelated to his terminal illnesses.

Furthermore, even after changing his opinion regarding causation, Dr. Baskin continued to maintain that the claimant had suffered from an electrical injury. In fact on May 31, 2005, he indicated that the claimant could have suffered radiculopathy or denervation secondary to the electrical injury. Dr. Baskin also indicated that if the

claimant had a tremor consistently as coarse as noted in his exams it would be inconsistent with his ability to perform work requiring fine motor skills. He also testified that electrical injuries could cause neurologic damage and that he had observed such injuries. Furthermore, when giving his deposition he acknowledged that the claimant's tremors, even if not physiologically caused by being shocked, could certainly have been caused by anxiety related to such an incident. He further indicated that it would not be unusual for someone to present with tremors after suffering an electrical injury.

Finally, I find that pursuant to the rationale of Terrell v. Arkansas Trucking Serv., Inc., 60 Ark App 93, 959 S.W.2d 70, (1998), the claimant is entitled to at least a psychological evaluation in order to determine the reason for his depression, PTSD, and need for treatment. In Terrell, the claimant sustained injuries from a compensable motor vehicle accident. After the accident the claimant began having dreams about having a motor vehicle accident. He also reported suffering headaches, pain, and a fear of driving another truck. The claimant was referred to a psychiatrist, which the respondents denied. On appeal, the

claimant contended that he would be unable to establish a compensable mental injury unless he was allowed to have a psychiatric evaluation authorized. The Court of Appeals agreed, indicating that a licensed psychologist or psychiatrist would need to perform an evaluation to determine the reason for the claimant's mental distress.

Id.

Likewise, in the present case there is no dispute that the claimant sustained physical injuries. Accordingly, whether the physical injuries have caused his mental distress should be answered by a psychological evaluation performed by a licensed professional. Pursuant to the rationale of Terrell, such treatment is also reasonable and necessary and therefore the liability of the respondents. As such, I would have affirmed the portion of the Administrative Law Judge's decision awarding medical benefits.

With regard to the claimant's request for temporary total disability benefits, I find that the findings of the Administrative Law Judge should have been affirmed but modified to award the claimant 26 weeks of

temporary total disability benefits as specified by Ark. Code Ann. §11-9-113.

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).

A claimant who has been released to light duty work but has not returned to work may be entitled temporary total disability benefits where there is insufficient evidence that the claimant has the capacity to earn the same or any part of the wages that he was receiving at the time of the injury. Breshears, supra; Sanyo Manufacturing Corp. v. Leisure, 12 Ark. App. 274 (1984).

I first find that the claimant remains in his healing period. The claimant's treating physician, Dr Antoon has consistently maintained that the claimant is unable to return to work as a result of his work-related

injuries. Likewise, the claimant has testified that he continues to suffer from the residual effects of his compensable injury. Furthermore, the claimant has been advised to have a psychological evaluation and was being treated for his PTSD and depression at the time of the hearing. As such, I find that the claimant remained in his healing period at the time of the hearing.

I further find that the claimant was unable to return to work during the time periods in question. Dr. Antoon released the claimant from returning to work as a result of his injuries. Additionally, though Dr. Baskin released the claimant to return to work on May 31, 2005, it is apparent that his only reason for releasing the claimant to return to work was because he was unsure of the reason for the claimant's condition - not because the claimant lacked a physical condition precluding him from being able to work. Accordingly, I would have awarded temporary total disability benefits.

For the aforementioned reasons, I must respectfully dissent.

SHELBY W. TURNER, Commissioner