

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. E017040

ROBERT BROOKS,
EMPLOYEE

CLAIMANT

CITY OF FORT SMITH,
EMPLOYER

RESPONDENT

CORCKETT ADJUSTMENT, INC.,
INSURANCE CARRIER

RESPONDENT

OPINION FILED JULY 19, 2010

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

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

Respondent represented by the HONORABLE DOUGLAS CARSON,
Attorney at Law, Fort Smith, Arkansas.

Decision of Administrative Law Judge: Affirmed.

OPINION AND ORDER

The respondent appeals an administrative law judge's opinion filed February 10, 2010. The administrative law judge found that the claimant proved he was entitled to additional medical treatment for post-traumatic stress disorder. After reviewing the entire record *de novo*, the Full Commission affirms the administrative law judge's opinion.

I. HISTORY

The record indicates that Robert Michael Brooks, now age 58, became employed with the Fort Smith Police Department in November 1974. The claimant testified that he confronted a suspected criminal in February 1978 "and I consequently had to shoot the individual which caused his death." The claimant testified that following the shooting incident, "I went through a rainbow of emotions from fear, fear of the incident, denial. I had - finally, I had some depression concerning the incident."

The claimant testified that he was promoted to police department Captain in May 1988, and that he was assigned to the Internal Affairs Division. The claimant described his work in internal affairs as "very stressful." The claimant testified that, in November 1989, he investigated a fatality shooting by a police department patrolman. The claimant testified that the incident "made me dig up my past shooting; it brought my shooting back, you know, to this point in time or that particular point in time." The claimant testified that while reading a letter at a police officer's retirement party, "I got to a point where I was having trouble breathing; I was getting very dizzy; I felt

like everything was closing in on me. I got to the point where I was shaking and becoming, you know, very nervous." The claimant testified that he did not work for the respondent after approximately May 17, 1990.

The claimant was admitted to Harbor View Mercy Hospital on June 4, 1990. Dr. Richard Mauroner evaluated the claimant at that time:

Mr. Brooks is a sixteen year veteran of the Fort Smith Police Department. He relates that for the past two years, he has been working in the Internal Affairs Division of the Police Department. It is a very pressure-filled job in which he is extremely isolated from his co-workers. He relates that over the past year, he has had the onset of depression. He has been working for nine months, in addition to his regular police work which takes forty-five hours per week, on an off-duty basis at Whirlpool working usually several days or at least the weekends. The patient says his mood is low nearly all the time....His self-esteem has been low. He admits to having suicidal ideations and has considered using his police revolver to shoot himself....The patient reports that he went to the Emergency Room at Sparks where he was given Atarax due to his numerous anxiety complaints. The patient apparently has had several panic-type episodes recently. One that occurred while making a speech at a retirement dinner for a fellow officer and another that occurred several weeks later when talking with an Assistant Chief of Police. The patient describes these panic episodes as feeling that he is trapped, feeling that he needs to escape, feeling extreme anxiety accompanied by tremulousness, dizziness, tachycardia, some confusion and even disorientation and crying....

Dr. Mauroner's primary psychiatric diagnosis was "Major depressive episode."

Dr. Kay Feild, a clinical psychologist, provided a consultation in June 1990 and noted, "Psychotherapy with this depressed-appearing man will be oriented toward helping him to work through feelings related to traumatic shooting in the line of duty."

The claimant was admitted to Sparks Regional Medical Center in September 1990, at which time he began treating with Dr. Joe H. Dorzab. Dr. Dorzab stated on September 27, 1990, "It is my professional opinion as a board certified psychiatrist licensed in the state of Arkansas that Mr. Brooks has been totally disabled for about the last six months secondary to a major depressive illness." Dr. Dorzab corresponded with Rudy Bischof, Assistant Vice President for Insurisk, on October 16, 1990:

He has a severe, totally incapacitating depression with some panic attacks and some characteristics of post-traumatic stress disorder. He is currently getting a course of electroconvulsive therapy after an extensive trial of psychotherapy and antidepressant medications via the Baker Psychiatric Clinic here in Fort Smith. The exact components of his illness are not entirely clear at this point in time as is commonly the case. Those factors include a physical depressive disorder with panic attacks or a physical panic disorder with depression or a post-traumatic

stress disorder or any mixture of the above.... There is no question in my mind whatsoever but that at least some of his difficulty (post-traumatic stress disorder) is directly secondary to work stresses including but not limited to the shooting of another person in the line of duty. It is possible that most of his symptoms are on that basis....It is possible that he will not be able to return to police work.

The claimant testified that he officially retired from the Fort Smith Police Department on October 17, 1990. The claimant was discharged from Sparks Regional Medical Center on October 20, 1990, at which time Dr. Dorzab's diagnoses included "Major Depression (could have Post-Traumatic Stress Disorder underpinnings.)"

An administrative law judge filed an opinion on May 30, 1991. The administrative law judge found, among other things, that the claimant proved his episode of major depression occurred during the course of the claimant's employment with the Fort Smith Police Department. The administrative law judge awarded temporary total disability benefits and reasonably necessary medical treatment. The Full Commission affirmed and adopted the administrative law judge's May 30, 1991 decision in an opinion filed November 25, 1991. The respondent appealed to the Arkansas Court of Appeals. The Court of Appeals affirmed the Commission.

City of Fort Smith v. Brooks, 40 Ark. App. 120, 842 S.W.2d 463 (1992).

The claimant testified that he became employed as an outside salesman after retiring from the Fort Smith Police Department. The claimant testified that, in 1995, he began suffering from nightmares related to the 1978 shooting incident: "There was times that I would be awakened from sleep with the nightmare and get up and go running through the house like somebody was after me, you know." The claimant testified that he "lost it" on or about December 12, 1995: "I just started shaking, I started crying, I felt like I was having, you know, a nervous breakdown. I just got back in the truck, I drove back home, and I went in and I told my wife, I said, you know, I just totally lost it." The claimant's wife testified, "He came home from work early, around 4 o'clock, and just sat down in the kitchen and started crying and shaking all over."

Dr. Dorzab noted on December 13, 1995, "Patient has had a very serious relapse of his depression." Dr. Dorzab diagnosed "Major Depression" and "Questionable Post-Traumatic Stress Disorder." Dr. Dorzab reported on May 9, 1996:

It is my professional opinion as a board certified psychiatrist licensed to practice medicine in the state of Arkansas that Mike Brooks is suffering from a disabling disorder that is a recurrence of the condition for which I treated him in 1990.

The nature of that disorder remains elusive for certainty and is even more difficult now that we have found that he has Huntington's Disease.

We have always been able to diagnose a Post-Traumatic Stress Disorder from work-related experiences. We have always been able to diagnose a major depressive illness, (thought to be physical in nature).

Now, we know that he has Huntington's Disease, although there are no clear-cut observable symptoms of that disorder yet. (There could be an underlying vulnerability to the above problems secondary to characteristics of Huntington's Disease that we can not measure.)

Despite the new knowledge in this case, we can not get away from the fact that the timing of his symptoms and the content of his thoughts suggest a causal role of the work injury if only in an "aggravation of a pre-existing condition" manner....

Counsel for the respondent questioned Dr. Dorzab at a deposition taken July 2, 1996:

Q. There's a reference in the medical reports that there is a suspicion of him having Huntington's Disease. Are you familiar with that?

A. It's no longer a suspicion. He has it.

Q. You've confirmed it?

A. Yes.

Q. What is Huntington's Disease?

A. Huntington's is one of the brain failure illnesses, like Alzheimer's Disease, in which there is generalized tissue loss of the brain that causes senility. This one is unique in the fact that it has a movement disorder associated with it in which people develop a terribly disfiguring and disabling snake-like, worm-like movement condition that is awful to endure, as well as senility, memory loss, profound memory loss. It also runs strongly in families.

Q. How do you confirm that?

A. There's a DNA test now that can be done that is supposedly very accurate.

Q. When was that done?

A. I'll have to look that up. This year, if that's satisfactory to you.

Q. Sure. Did that cause you to change treatment?

A. No. There's no treatment for Huntington's....

Q. What do you think his prognosis is?

A. For Huntington's?

Q. Yes.

A. It's terrible. But he has no symptoms of it now. I mean, that's - if he has - I can't tell you that he has no symptoms of it for sure, but he has none of the usual characteristics of it. And he's been sent to the neurologist, Dr. Griggs, who would deal more with Huntington's than I would. And he's had some intellectual testing done by Dr. Huisman, who's a neuropsychologist, and in none of those examinations has there been any clear cut evidence of the operation of Huntington's at this

time. Although, subtle things may be happening that none of us know....

Q. When you told him or made him aware of this, did it seem to affect his condition? I mean, did it cause more depression?

A. Well, it caused grief, and that's different than depression....

An administrative law judge filed an opinion on August 9, 1996. The administrative law judge found that the claimant proved he was entitled to additional temporary total disability benefits and reasonably necessary medical treatment. The Full Commission affirmed the administrative law judge's decision in an opinion filed March 20, 1997. The Arkansas Court of Appeals affirmed the Commission in an unpublished opinion. *City of Fort Smith v. Brooks*, CA97-823 (March 25, 1998). The parties have stipulated that "prior opinions are *res judicata* and the law of this claim."

The claimant was admitted to Laureate Psychiatric Clinic and Hospital on June 9, 2008, at which time the chief complaint was "deterioration of chronic mental disorder."

The following history was given:

This is a 56-year-old white male was initially admitted to Sparks Regional Medical Center in Ft. Smith, Arkansas on May 13, 2008 at that time the patient was having excessive problems with his sleep coming up to go to sleep at night and sleeping for only one hour at night. The patient

states he is afraid to go to bed thinking something might happen to him. Patient also had become increasingly more anxious with significant mood symptomatology including loss of interest implantable (sic) activities, thoughts of suicide, decreased sleep, decreased energy, decreased motivation, and feelings of worthlessness and hopelessness. While at Sparks regional the patient had significant agitation requiring restraints on several occasions and been tried on multiple medications with minimal results. The patient had had a history of electric convulsive therapy in the past and the family was hopefully this can be done again for transfer was subsequently made to this facility for that purpose. The patient overall had improved while [at Sparks Regional Hospital] however he was still showing some signs of mood and paranoia. Occasional auditory hallucinations....

History of injuries: fell from ladder incurring a concussion in 1996. Pt has no history of falls....

Symptoms of Huntington's that pt experiences include memory loss, short and long term; pt dx with Huntington's 10 years ago; Pt occ gets dizzy due to his meds he states....

Dr. Jimmie D. McAdam's impression included

"Huntington's Disease."

The claimant was discharged from Laureate Psychiatric Clinic on July 19, 2008:

This is a 56-year-old white male who was transferred to inpatient services under my care for treatment of a psychotic depression and PTSD. The patient had been in the hospital for approximately 1 month prior to his transfer and was transferred here to receive elective convulsive therapy....Patient's mood gradually

improved over time his psychosis gradually improved over time there was times during his hospitalization where he was in seclusion as well is on one-to-one for almost 1 week. Patient now has had no behavioral problems he is oriented to place person and parts of time. He is not exhibiting any psychotic symptomatology or any delusional thought. Patient's sleep is a major issue but is now sleeping consistently 5+ hours a night....I have also spoken to his outpatient psychiatrist Dr. Linker in Arkansas who will be assuming his care post discharge....There was concern by the family members that Huntington's disease may be part of his clinical picture the patient did not have any gross movement disorder but did have some mild oral facial movements that were noted. If Huntington's is part of his diagnosis and prognosis honestly is poor regarding his mood depression and cognition.... This is a 56-year-old white male with history of cosmetic stress disorder major depression with exacerbation including a month-long stay inpatient facility with only partial response now here for continued treatment with electroconvulsive therapy.

Dr. McAdams' discharge diagnosis was "Axis I Primary: major depressive disorder recurrent severe with psychotic features ... Other: post traumatic stress disorder."

The claimant was admitted to Washington Regional Medical Center on July 24, 2008. Dr. Gary Linker reported on July 25, 2008:

This patient is a 56 year old Caucasian male who is known to me from several years of work in outpatient clinical setting. Approximately 2 months ago, the patient became acutely psychotic and agitated and due to lack of bed availability

at Generations Geropsychiatric Facility, he was admitted to Sparks Senior Care. During that time, he remained severely paranoid, received frequent staff interventions to give psychotropic medications. He was at that time court ordered for treatment due to this poor insight and judgement. He remained at Sparks Senior Care for approximately 30 days and then was transferred to Laureate in Tulsa, Oklahoma where he received 12 electroconvulsive therapy treatments....Since discharge from the hospital, the patient has become further and further agitated with difficulty with severe anxiety and depression....The patient at this time notes severe anxiety and periods of confusion. His short-term memory is commensurate with recent treatment with electroconvulsive therapy. He notes confusion and severe depression....

He suffers from post-traumatic stress disorder related to his work as a police officer....

The patient suffers from Huntington's disease....

CHALLENGES

Patient with recent acute exacerbation of chronic stress related to post-traumatic stress disorder.

Dr. Linker's impression was "AXIS I: Psychosis, not otherwise specified. Cognitive disorder, not otherwise specified status post electroconvulsive therapy....AXIS IV: Sequelae of cognitive decline. Loss of independence. Recurrent sustained depression. Anxiety. Psychoses....Admit to Generations Geropsychiatric Facility for medical and psychiatric evaluation and stabilization.

Psychiatric goal is to decrease psychoses and improve mood, decreased anxiety."

H. Gene Chambers, Ph.D., provided a neuropsychological evaluation derived from his observations of the claimant on July 25, 2008 and July 29, 2008:

This 56-year-old white male was referred for a neuropsychological evaluation by the members of the Multidisciplinary Treatment Team of the Generations Unit at Washington Regional Medical Center. His admitting diagnosis was major depression with psychosis.

PERTINENT HISTORY FOR THIS EVALUATION

Mr. Brooks began to exhibit significantly increasing discomfort approximately mid July. It was reported that he was beginning to experience panic attacks and he felt like he was extremely vulnerable. He reported having feelings that bugs were crawling on his arms and legs. He withdrew, not wanting to be around even family members and his appetite was decreasing. Subsequently, he was placed in the Generations Unit for further stabilization, evaluation, and treatment of this condition. He does have a recent history of being treated in a psychiatric hospital for post-traumatic stress disorder. He underwent electroconvulsive therapy treatment in July as well....

Dr. Chambers administered a number of tests and gave the following diagnostic impression: "AXIS I: Mild cognitive impairment/cognitive disorder, not otherwise specified."

The claimant was discharged on August 1, 2008.

Rudy Bischof, Senior Vice President for Crockett, corresponded with Washington Regional Medical Center on August 20, 2008:

I am presently administering and have been administering a workers' compensation claim on Robert Michael Brooks on behalf of the City of Fort Smith, AR by whom Mr. Brooks was employed. I am in receipt of two bills from your hospital showing a date of service of 7-23-08 - 8-1-08 with a bill for services of \$11,142.80.

I must respectfully deny any payment or responsibility to either of the bills for services as the patient has been diagnosed as having Huntington's Disease, which bears no relationship to his workers' compensation claim with the City of Fort Smith, AR.

Therefore, please submit your bill to Mr. Brooks hospitalization or medical carrier, which I understand to be Humana.

Dr. Linker stated on November 12, 2008, "Mr. Brooks was referred by me to receive maintenance ECT due to recurrent treatment resistant depression related to his chronic PTSD. I feel this treatment is necessary to try to prevent a return to a more severe depressed state."

The claimant was admitted to Laureate Psychiatric Clinic from November 12, 2008 until December 12, 2008. It was noted on December 12, 2008, "This is a 56-year-old MWM with a history of depression and PTSD who presents with increasing aggression and possible psychotic symptoms....He

states he has had depression off and on for 15 years. His most recent episode began 2-3 weeks ago without identifiable stressor....He reports significant anxiety related to him shooting an intruder in 1976. He has nightmares and flashbacks of the event." The discharge diagnosis was "major depressive disorder recurrent severe with psychotic features" and "post-traumatic stress disorder."

The claimant's attorney wrote to Rudy Bischof on November 17, 2008:

Enclosed you will find a copy of a November 12, 2008 letter from Dr. Linker referring Mr. Brooks to receive maintenance ECT due to recurrent treatment resistant depression related to Mr. Brooks' chronic PTSD. It is my information that Mr. Brooks had to be taken to Laureate Hospital in Tulsa in order to receive the ECT treatments. Please let me know whether the Respondents will accept liability for the recommended treatment.

Rudy Bischof replied in a handwritten note dated November 26, 2008, "City Ft. Smith will accept treatment for ECT per Dr. Linker's report."

The claimant was admitted to Washington Regional Medical Center on March 11, 2009, at which time he was examined by Dr. James B. Baker:

This very pleasant 56-year-old white male presents with clinical depression and worsening symptoms recently because he says his medications simply are "not working any longer."

Patient has a long medical history of multiple medical problems including Huntington's chorea and hypothyroidism, has dealt with a great deal of emotional lability. He basically has been having more panic attacks, anxiety, depression, and basically family is concerned that his medications simply are not working any longer....

He does have a history of Huntington's chorea, which he says was diagnosed about 15 or 16 years ago. Patient also has a history of clinical depression....

IMPRESSIONS

1. Hypothyroidism.
2. Huntington's chorea.
3. Clinical depression.
4. History of smoking.
5. History of aortic aneurysm.

Dr. Baker's treatment plan included psychiatric consultation, evaluation, and treatment. Dr. Baker copied his report to Dr. Linker. Dr. Linker's impression on March 13, 2009 was "Posttraumatic stress disorder with anxiety, depression, recurrent depressed mood with severe insomnia and anxiety." The claimant was discharged from Washington Regional on March 18, 2009.

The claimant was again admitted to Laureate Psychiatric Hospital on or about May 3, 2009. The claimant's attorney wrote to Rudy Bischof on May 22, 2009:

Mrs. Brooks has today advised my office that none of the bill from Laureate Hospital in Tulsa has been paid regarding Mr. Brooks' treatment there in

November 2008. Please provide me proof of payment for Mr. Brooks' treatment at Laureate Hospital at your earliest convenience.

The record does not show a response from Ms. Bischof.

A pre-hearing order was filed on July 30, 2009. The claimant contended that his attorney "has had several communications with the respondent-carrier regarding unpaid bills and was given the impression that the respondents were going to pay for hospitalizations that occurred in connection with the claimant's post-traumatic stress disorder; however, the claimant's attorney has subsequently learned that the workers' compensation insurance carrier has in fact not paid for various hospitalizations. The claimant contends that his attorney is entitled to an attorney's fee since this is a pre-Act 796 case."

The respondent contended that the claimant "has incurable and progressive Huntington's Disease or Huntington's Chorea, an inherited condition, which is not related to the compensable injury. Therefore, it is not a condition or injury arising out of and in the course of employment. The compensable post-traumatic stress disorder is not the major cause of the current need for treatment. The Huntington's Disease or Huntington's Chorea suffered by

the claimant is a non-work related independent intervening cause, so that the respondent is not liable for the current claimed treatment. The benefits claimed by the claimant at this time are not reasonably necessary in connection with the compensable injury."

The parties agreed to litigate the following issues:

"1. Claimant's entitlement to benefits for his hospitalization for post-traumatic stress disorder after May 1, 2008. 2. Attorney's fees."

Dr. Linker signed a Medical Opinion on October 9, 2009:

"It is my opinion within a reasonable degree of medical certainty that the hospitalizations and shock therapy that Mr. Brooks has undergone since May of 2008 are due to his Post Traumatic Stress Disorder and not to Huntington's Disease."

A hearing was held on November 12, 2009. The claimant was not present at the hearing. The claimant's wife, Kay Brooks, testified on direct examination:

Q. Did you notice any change in [the claimant's] behavior in approximately May of 2008?

A. Yes, sir....He had started getting more nervous. We had changed his medicines several times. He was sleeping more. He was having nightmares, getting real restless, getting

agitated real easy, getting harder for me to control....

Q. Where is Mr. Brooks today?

A. Washington Regional Hospital in Fayetteville.

Q. How long has he been there?

A. Five weeks.

Q. Who put him - who admitted him?

A. Dr. Linker....

The parties deposed Dr. Linker on November 17, 2009.

Dr. Linker testified that he had a medical degree and certification from the American Board of Psychiatry and Neurology. The respondent's attorney questioned Dr. Linker:

Q. Doctor, in your training and general treatment, not specific to Mr. Brooks, are you familiar with the condition known as Huntington's Disease?

A. Yes, sir....

Q. Huntington's disease is an inherited disorder of the brain; is that correct?

A. Yes, sir.

Q. Okay. Huntington's disease would not be in any way associated with the event that caused Mr. Brooks to develop the post-traumatic stress disorder that he also has been diagnosed with?

A. No, sir....

Q. Well, to make sure there's no doubt in this case, Mr. Brooks has been diagnosed as having Huntington's disease; is that correct?

A. Yes, he has been....

The claimant's attorney questioned Dr. Linker:

Q. In that large packet that you've got in front of you, there is a document that has been signed by you. It's on page 70.

A. Seventy....

Q. Is the opinion expressed in that document still your opinion?

A. Yes, sir....

Q. So is it your opinion that the psychoses for which Mr. Brooks has been treated has been caused by the PTSD?

A. Yes, sir.

Q. And you mentioned an October hospitalization. What brought that hospitalization about for Mr. Brooks?

A. October 6, 2009 to this date, he has been hospitalized with me. The thing that brought it on is, again, he fractures along the same lines as he always does. He doesn't - he gets to where he can't sleep, he gets irritable, he gets anxious, and he starts getting paranoid....

Q. Doctor, what is your diagnosis in regard to what condition caused the need for the October 6, 2009 hospitalization?

A. PTSD - post-traumatic stress disorder.

An administrative law judge filed an opinion on February 10, 2010. The administrative law judge found that the claimant proved he was entitled to additional medical treatment for post-traumatic stress disorder. The respondent appeals to the Full Commission.

II. ADJUDICATION

An administrative law judge found, "3. The claimant has proven by a preponderance of the evidence that he is entitled to the cost associated with the treatment and hospitalizations from his post traumatic stress disorder from and including May 2008 through the date of the hearing in this matter." The Full Commission affirms this finding. When the primary injury is shown to have arisen out of and in the course of employment, the employer is responsible for every natural consequence that flows from that injury. *McDonald Equip. Co. v. Turner*, 26 Ark. App. 264, 766 S.W.2d 936 (1989). The basic test is whether there is a causal connection between the two episodes. *Jeter v. B.R. McGinty Mech.*, 62 Ark. App. 53, 968 S.W.2d 645 (1998). Where the second complication is a natural and probable result of the first injury, it is deemed a recurrence, and the employer

remains liable. *Calion Lumber Co. v. Goff*, 14 Ark. App. 18, 684 S.W.2d 272 (1985).

In the present matter, the claimant testified that he began suffering from depression as a result of a shooting incident which arose out of and in the course of the claimant's employment as a police officer for the respondent. The claimant began receiving psychiatric treatment for major depression beginning in June 1990. Dr. Dorzab informed the respondent-carrier in October 1990 that the claimant was suffering from severe depression with characteristics of post-traumatic stress disorder. An administrative law judge filed an opinion on May 30, 1991 and found that the claimant's depression was a compensable condition. The Full Commission affirmed and adopted the administrative law judge's decision, and the Arkansas Court of Appeals affirmed the Commission. The Court of Appeals determined that there was "clear history of a psychological injury occurring at work." *City of Fort Smith, supra*, at 125. The finding that the claimant had sustained a compensable psychological injury was of course adjudicated in accordance with Arkansas law prior to enactment of Act 796 of 1993.

Dr. Dorzab reported in May 1996 that the claimant not only was being treated for major depression and post-traumatic stress disorder, but that the claimant had also recently been diagnosed with Huntington's Disease. Dr. Dorzab described this disease as "one of the brain failure illnesses, like Alzheimer's Disease," but Dr. Dorzab testified in May 1996 that the claimant had "no symptoms of it now." The Commission subsequently found that the claimant proved he was entitled to additional temporary total disability benefits and reasonably necessary medical treatment as a result of the compensable psychological injury.

The claimant was admitted to Laureate Psychiatric Clinic and Hospital on June 9, 2008, at which time the chief complaint was "deterioration of chronic mental disorder." Although he noted that the claimant had been diagnosed with Huntington's Disease, Dr. McAdams discharged the claimant on July 19, 2008 with diagnoses of "major depressive disorder, recurrent severe with psychotic features ... Other: post traumatic stress disorder." Dr. Linker subsequently noted that the claimant had experienced "recent acute exacerbation

of chronic stress related to post-traumatic stress disorder."

The respondent on appeal contends that the administrative law judge erred in awarding treatment for post-traumatic stress disorder "from and including May 2008 through the date of the hearing in this matter." The respondent argues that the hospitalization beginning in October 2009 was improperly included in the award, because no related claim for benefits had been filed so that the respondent had not controverted a claim for benefits beginning in October 2009. However, we note that the parties expressly agreed to litigate the claimant's entitlement to benefits "for his hospitalization for post-traumatic stress disorder after May 1, 2008." According to the record before the Commission, the claimant received periods of in-patient psychiatric treatment for major depression and post-traumatic stress disorder beginning on June 9, 2008. The claimant's wife, Kay Brooks, testified on November 12, 2009 that the claimant had again been admitted to Washington Regional Hospital for in-patient psychiatric treatment five weeks earlier. Dr. Linker corroborated Ms. Brooks' testimony in a deposition taken November 17, 2009.

Dr. Linker testified that he had admitted the claimant for hospital treatment beginning October 6, 2009, and that the reason for the admission was post-traumatic stress disorder. The Full Commission finds that the October 6, 2009 hospitalization was properly included in the administrative law judge's award.

The Full Commission finds that the claimant sustained a recurrence of his compensable psychological injury beginning no later than June 9, 2008. The claimant's hospitalization and treatment for depression and post-traumatic stress disorder was a natural consequence flowing from the compensable psychological injury. The claimant's hospitalization and treatment beginning June 9, 2008 was causally connected to the compensable psychological injury. The respondent argues on appeal that Dr. Linker's opinion on causation does not satisfy minimum requirements for admissibility and must be given no weight. The respondent implicitly cites Ark. Code Ann. §11-9-705(d) (Repl. 2002), a 2001 amendment to the statute not applicable to the instant claim. We note that the Commission is not bound by technical or statutory rules of evidence. See Ark. Code

Ann. §11-9-705(a) (1) (1987); *Tracor MBA v. Artissue Flowers*, 41 Ark. App. 186, 850 S.W.2d 30 (1993).

Dr. Linker explicitly opined on October 9, 2009, "the hospitalizations and shock therapy that Mr. Brooks has undergone since May of 2008 are due to his Post Traumatic Stress Disorder and not to Huntington's disease." Dr. Linker reiterated his causation opinion at the deposition taken November 17, 2009. We find that Dr. Linker's opinion is supported by the evidence and is entitled to significant evidentiary weight. The Full Commission therefore finds that the post-traumatic stress disorder suffered by the claimant beginning no later than June 9, 2008 was a recurrence of the claimant's compensable psychological injury.

Based on our *de novo* review of the entire record currently before us, the Full Commission finds that the claimant proved he was entitled to additional medical treatment. The claimant proved by a preponderance of the evidence that his treatment and hospitalization of record beginning no later than June 9, 2008 was reasonably necessary in accordance with Ark. Code Ann. §11-9-508(a) (1987). The respondent is liable for the cost of said

treatment and hospitalization, including the claimant's psychiatric hospitalization beginning October 6, 2009. The claimant's attorney is entitled to fees for legal services in accordance with Ark. Code Ann. §11-9-715(1987). For prevailing on appeal to the Full Commission, the claimant's attorney is entitled to an additional fee of two hundred fifty dollars (\$250), pursuant to Ark. Code Ann. §11-9-715(b) (1987).

IT IS SO ORDERED.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority's findings that the claimant proved by a preponderance of the evidence that he was entitled to the cost associated with the treatment and hospitalizations from May 2008 through the date of the hearing. Based upon my de novo review of the record, I find that the claimant has failed to meet his burden of proof.

At the time of the hearing, it was determined that the claimant was currently being hospitalized at Washington Regional Medical Center in Fayetteville for five weeks preceding the hearing, and he was still hospitalized at the time fo the hearing. The pre-hearing questionnaire states nothing about this hospitalization. In fact, the respondents did not know that the claimant was receiving hospital care until the date of the hearing.

Since the current or most recent hospitalization had not even started at the time the claimant set forth the issues in his pre-hearing questionnaire and at the time the pre-hearing order was entered, the respondents contended that the hospitalization which was underway at the time of the hearing should not be an issue before the Commission at this time.

The evidence demonstrates that the claimant submitted no medical evidence whatsoever pertaining to the current or most recent hospitalization. In my opinion, this most recent hospitalization should not be included in any award.

No proof was offered to show that a claim for benefits for this separate, most recent hospitalization had

been submitted to the respondents for payment and that payment had been declined under circumstances amounting to controversy. No claim for those benefits had been submitted to respondents and the fact of this hospitalization was first made known to the respondents at the beginning of the hearing. Therefore, the respondents had not refused payment and had not controverted any payments relating to that hospitalization. The claimant's Exhibit No. 2 is comprised of several items of correspondence related to the bills for the two courses of treatment. None in any way relate to the hospitalization apparently beginning sometime in October 2009.

This fact is demonstrated by claimant's own exhibits. For example, the claimant's attorney established that he wrote the respondent's claims manager on June 3, 2008, asking whether that hospitalization would be paid. Mr. Bischof replied with respect to the specific dates of service of 7-23-08 and 7-24-08 through 8-1-08 and denied payment of those bills based on the claimant's Huntington's Disease. The claimant's attorney then later submitted proof of the ECT treatments to the respondents for their review. The respondents accepted that treatment as compensable. The

last correspondence submitted by the claimant's attorney was his letter to the respondents' claims manager on May 22, 2009, referring only to the claimant's treatments in November 2008, not any later time.

The claimant never submitted any request for payment of the hospitalization beginning in October 2009 to the respondents and never took any other action to notify the respondents that this hospitalization was part of any claim for benefits. There also is no evidence that the respondents at any time ever said that it was denying all further medical treatment to the claimant. However, the majority has ordered the respondents to pay for medical care which it had never been notified about prior to the hearing.

As noted above, the claimant's pre-hearing questionnaire stated that, in addition to his entitlement to an attorney's fee, the issue to be litigated was:

Whether hospitalizations at Sparks Regional Medical Center, Washington Regional Medical Center, St. Francis Hospital, and Laureate Psychiatric Clinic & Hospital are reasonable and necessary medical treatment regarding the claimant's job related psychological injury.

The respondents's pre-hearing questionnaire, being filed after the claimant's pre-hearing questionnaire,

adopted and used that same language in framing the issues for the hearing. The pre-hearing order, filed July 30, 2009, stated that, "By agreement of the parties the issues to litigate are limited to the following:

1. The claimant's entitlement to benefits for his hospitalizations for post-traumatic stress disorder after May 1, 2008.

Both the claimant and the respondents identified in their pre-hearing questionnaires the hospitalizations at Sparks, Washington Regional, St. Francis Hospital, and Laureate Psychiatric Clinic & Hospital which already had occurred as the medical expense claims at issue. At the time, both prehearing questionnaires were filed and the Administrative Law Judge's prehearing order was issued, the hospitalization which started in October 2009 had not occurred because of the obvious reason that this was still a future event. Obviously, no one was considering litigating a hospitalization which had not occurred and which was not scheduled to occur.

In my opinion, the majority erred in awarding the hospitalization that occurred at the time of the hearing. There were no medical bills submitted whatsoever to the respondents in order for them to pay, deny or review.

Accordingly, I must dissent from the majority's award of this hospitalization.

I also find that the prior hospitalizations were not reasonable and necessary and related to the claimant's post traumatic stress disorder. The evidence demonstrates that when the claimant was treated at Laureate Psychiatric Clinic, his symptoms included insomnia, loss of interest in activities, depression, decreased energy and motivation, and occasional hallucinations. The doctor noted a "concern" by the family that the claimant's Huntington's Disease was "part of his clinical picture." The doctor noted that if Huntington's is part of the diagnosis, his prognosis "honestly is poor regarding his mood, depression, and cognition." The doctor also noted that "symptoms of Huntington's" (not PTSD) that the claimant was experiencing included memory loss, both short and long term.

Dr. Mike Hollomon reported on August 18, 2008, that the claimant was admitted "for treatment of severe depression and anxiety," noting specifically in the "Identifying Data" portion of his report that the claimant did have Huntington's Disease. He mentioned claimant's PTSD

only as one of several conditions in his "Discharge Diagnoses."

In November 2008, the claimant's delusions were getting worse, including apparently untrue statements that his wife "has betrayed me" and that he believed while in the hospital that he was "on a floating casino." The physician authoring this report noted that there was "some concern regarding the patient's diagnosis of Huntington's..."

When the claimant was hospitalized again in March 2009, his symptoms were panic attacks, anxiety, depression, and edginess, all increasing in severity. It was stated in that hospitalization record that the claimant's "challenges" included "progressive Huntington's Disease with recurrent depression" along with post-traumatic stress disorder-related symptoms.

During this same hospitalization, Dr. James Baker, in his Final Report, noted that the claimant had "a long medical history of multiple medical problems including Huntington's Chorea and hypothyroidism..." Dr. Baker did not mention PTSD in either his section on "Chief Complaint" (which does contain the language just quoted) or his list of

conditions on his "Impressions" resulting from his full exam of the claimant.

In the occupational therapy notes for March 12, 2009, the occupational therapist noted "involuntary movements of facial muscles/head," specifically noting that the claimant had Huntington's Chorea.

The deposition of claimant's primary treating physician, Dr. Gary Linker, was taken. Dr. Linker is a medical doctor certified in psychiatry and neurology. Dr. Linker confirmed that Huntington's Disease is an inherited disease which is not in any way associated with or caused by the event that led to the claimant's developing his PTSD. Huntington's Disease is a progressive disorder which is a serious medical condition even in the complete absence of a history of PTSD.

Dr. Linker agreed that Huntington's Disease is characterized by a constellation of symptoms, including depression, loss of interest in activities, insomnia, problems with judgment or decision-making, hallucinations, facial tics and grimaces, and thought disorder, mood disorder, and paranoia. Dr. Linker agreed that the claimant's symptoms specifically exhibited during the

subject hospitalizations included a fairly severe depression, confusion, anxiety, psychosis, cognitive decline, hallucinations, and delusions. The claimant's symptoms match the classic symptoms of Huntington's Disease.

Dr. Linker agreed that when Dr. Baker, in his records, noted the claimant's "obvious history of chorea-type movements" on March 11, 2009, he probably was referring to the Huntington's Chorea as opposed to movements caused by something else.

Dr. Linker specifically testified that he believed that the post-traumatic stress disorder was making the claimant's non-compensable Huntington's Disease worse. However, I give no weight to his opinion because he specifically admitted that his was not an unbiased assessment:

A "That -- that gets into a question where I think it's very difficult for, I think, a physician. I think all attorneys know this and weigh this. I think it's very difficult for a physician who has had any relationship with a patient, a client, to not have some sort of adulterated opinion. My opinion is that they are connected, just like diabetes and PTSD are connected, or schizophrenia are connected -- that his PTSD and his Huntington's are connected.

Further, he admitted that there is not a consensus of support in the medical community for his position.

Specifically, he testified:

Q But you are not aware of any specific medical studies that confirm this relationship that you have just --

A ... So what I'm talking about is more theoretical. I could -- I could find articles to support it, but you could find articles to say not enough is known about that.

The Commission has a duty to translate the evidence on all the issues before it into findings of fact. Weldon v. Pierce Bros. Const. Co., 54 Ark. App. 344, 925 S.W.2d 179 (1996). Moreover, the Commission has the authority to resolve conflicting evidence and this extends to medical testimony. Foxx v. American Transp., 54 Ark. App. 115, 924 S.W.2d 814 (1996). The Commission has the duty of weighing the medical evidence as it does any other evidence, and the resolution of any conflicting medical evidence is a question of fact for the Commission to resolve. Emerson Electric v. Gaston, 75 Ark. App. 232, 58 S.W.3d 848 (2001); CDI Contractors McHale, 41 Ark. App. 57, 848 S.W.2d 941 (1993); McClain v. Texaco, Inc., 29 Ark. App. 218, 780 S.W.2d 34 (1989).

Although the Commission is not bound by medical testimony, it may not arbitrarily disregard any witness's testimony. Reeder v. Rheem Mfg. Co., 38 Ark. App. 248, 832 S.W.2d 505 (1992). However, it is well established that the determination of the credibility and weight to be given a witness's testimony is within the sole province of the Workers' Compensation Commission. Wal-Mart Stores, Inc. v. Sands, 80 Ark. App. 51, 91 S.W.3d 93 (2002). 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. McClain, supra.

The Commission is never limited to medical evidence in arriving at its decision. Moreover, it is well within the Commission's province to weigh all the medical evidence and determine what is most credible. Smith-Blair, Inc. v. Jones, 77 Ark. App. 273, 72 S.W.3d 560 (2002). The Commission is entitled to review the basis for a doctor's opinion in deciding the weight and credibility of the opinion and medical evidence. Id. In addition, the Commission has the authority to accept or reject a medical opinion and determine its medical soundness and probative

force. Green Bay Packaging v. Bartlett, 67 Ark. App. 332, 999 S.W.2d 695 (1999). The Commission's resolution of the medical evidence has the force and effect of a jury verdict. McClain, supra.

After conducting a de novo of the record, I find that the claimant has failed to prove by a preponderance of the evidence that any of his hospitalizations were related to his post-traumatic stress disorder, but were instead related to the claimant's Huntington's Disease. Huntington's Disease is a disease defined as a:

¹"progressive, degenerative disease that causes certain nerve cells in your brain to waste away. As a result, you may experience uncontrolled movements, emotional disturbances and mental deterioration.

Huntington's Disease is an inherited disease. Signs and symptoms usually develop in middle age. Younger people with Huntington's Disease often have a more severe case, and their symptoms may progress more quickly. Rarely, children may develop Huntington's Disease.

Medications are available to help manage the signs and symptoms of Huntington's Disease, but treatments can't prevent the physical and mental decline associated with the condition.

The signs and symptoms of Huntington's Disease can vary significantly from person to person. Huntington's Disease usually develops slowly, and the severity of signs and symptoms is related to the degree of nerve cell loss. Death occurs about 10 to 30 years after

¹ <http://www.bing.com/helath/article/mayo-117577/Huntingtons>

signs and symptoms first appear. The disease progression may occur faster in younger people.

Early signs and symptoms of Huntington's Disease often include:

Personality changes, such as irritability, anger, depression or a loss of interest;

Decreased cognitive abilities, such as difficulty making decisions, learning new information, answering questions and remembering important information;

Mild balance problems;

Clumsiness;

Involuntary facial movements, such as grimacing.

The claimant very clearly has signs of Huntington's Disease. Even his doctor, Dr. Linker, stated that it was difficult to demarcate between the Huntington's Disease and PTSD. When questioned during his deposition, the following is enlightening:

Q Now, is psychosis normally associated with PTSD or with Huntington's Disease?

A Uh, psychosis is normally related to both conditions if they are severe enough. So, a person typically is going to fracture along similar lines, so that if they -- if they, as a part of their previous exacerbation, experienced depression and panic attacks, you could almost say with certainty their future episodes will have depression and panic attacks.

Simply put, I cannot find that the claimant has proven by a preponderance of the evidence that his hospitalizations are related to his post-traumatic stress disorder. Therefore, for all the reasons set forth herein, I must dissent from the majority's award of benefits.

KAREN H. MCKINNEY, COMMISSIONER