

**NOT DESIGNATED FOR PUBLICATION**

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION  
CLAIM NO. F806803

ERIC DILL, EMPLOYEE	CLAIMANT
GREEN DENTAL LABORATORIES, INC., EMPLOYER	RESPONDENT
HARTFORD FIRE INSURANCE COMPANY, CARRIER	RESPONDENT

OPINION FILED MARCH 29, 2010

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

Claimant represented by the HONORABLE PHILIP WILSON,  
Attorney at Law, Little Rock, Arkansas.

Respondent represented by the HONORABLE GENE WILLIAMS,  
Attorney at Law, Little Rock, Arkansas.

Decision of Administrative Law Judge: Affirmed and Adopted.

OPINION AND ORDER

Claimant appeals from a decision of the  
Administrative Law Judge filed October 8, 2009.

The Administrative Law Judge entered the following  
findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation Commission has jurisdiction of this claim.
2. The stipulations set forth above are reasonable and are hereby accepted.
3. The claimant has not proven by a preponderance of the evidence that he is

entitled to additional treatment in the form of surgery recommended by Dr. Zachary Mason.

4. The claimant has not proven by a preponderance of the evidence that he is entitled to temporary total disability benefits.
5. The claimant has not proven by a preponderance of the evidence that he is entitled to a controverted attorney's fee.

We have carefully conducted a de novo review of the entire record herein and it is our opinion that the Administrative Law Judge's decision is supported by a preponderance of the credible evidence, correctly applies the law, and should be affirmed. Specifically, we find from a preponderance of the evidence that the findings of fact made by the Administrative Law Judge are correct and they are, therefore, adopted by the Full Commission.

Thus, we affirm and adopt the decision of the Administrative Law Judge, including all findings and conclusions therein, as the decision of the Full Commission on appeal.

IT IS SO ORDERED.

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A. WATSON BELL, Chairman

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KAREN H. MCKINNEY, Commissioner

Commissioner Hood dissents.

**DISSENTING OPINION**

I must respectfully dissent from the majority opinion. After a de novo review of the record, I find that the claimant has proved by a preponderance of the evidence that he is entitled to the reasonably necessary medical treatment recommended by Dr. Mason. I also find that the claimant has proved by a preponderance of the evidence that he is entitled to temporary total disability benefits from November 18, 2008 until a date yet to be determined. Therefore, I must respectfully dissent.

Medical Treatment

The Workers' Compensation Act requires employers to provide such medical services as may be reasonably necessary in connection with an employee's injury. Ark. Code Ann. § 11-9-508(a) (Repl. 2002); American Greeting Corp.

v. Garey, 61 Ark. App.18, 963 S.W. 2d 613 (1998). Injured employees must prove that medical services are reasonably necessary by a preponderance of the evidence; however, those services may include that necessary to accurately diagnose the nature and extent of the compensable injury; to reduce or alleviate symptoms resulting from the compensable injury; to maintain the level of healing achieved; or to prevent further deterioration of the damage produced by the compensable injury. Ark. Code Ann. § 11-9-705(a)(3) (Repl. 2002); Jordan v. Tyson Foods, Inc., 51 Ark. App. 100, 911 S.W.2d 593 (1995); and See Artex Hydroponics, Inc. v. Pippin, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

Here, the claimant had a compensable injury. The claimant saw Dr. Mason initially, and as a result of that initial visit Dr. Mason indicated that the claimant may in fact require surgery if the symptoms persisted and conservative treatment did not resolve the problem. The claimant, as suggested by the doctor, took prescriptions and avoided bending, stooping, and lifting anything over 50 lbs. Dr. Mason advised the claimant to return if after a period of time his symptoms were not relieved or worsened. That is exactly what he did. The claimant returned to Dr. Mason who recommended following through with the previously suggested

surgery because of the stenosis and because of the claimant's symptoms.

While the Commission has the authority to resolve conflicting evidence, including medical testimony, Foxx v. American Transp., 54 Ark. App. 115, 924 S.W.2d 814 (1996), the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. Coleman v. Pro-transportation, 97 Ark. App. 388, 249 S.W.2d 149, (2007). Here, Dr. Mason's is the only medical opinion addressing the claimant's need for additional reasonably necessary medical treatment. Dr. Mason has recommended surgery for the claimant's compensable injury. The majority, by affirming and adopting the Administrative Law Judge, cannot disregard Dr. Mason's opinion and substitute its own opinion as to the cause of the claimant's symptoms and need for treatment. Conjecture and speculation, even if plausible, cannot take the place of proof. Ark. Dept. of Correction v. Glover, 35 Ark. App. 32, 812 S.W.2d 692 (1991). Dena Construction Co. v. Herndon, 264 Ark. 791, 575 S.W.2d 155 (1979). Arkansas Methodist Hospital v. Adams, 43 Ark. App. 1, 858 S.W.2d 125 (1993). I find, based on Dr. Mason's medical records and the claimant's credible testimony, that the claimant is entitled

to the treatment recommended by Dr. Mason, including surgery.

Temporary Total Disability

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 to 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, 281-82 (1984). When an injured employee is totally incapacitated from earning wages and remains in the healing period, she is entitled to temporary total disability. Id.

Here, after an unsuccessful two week return to work, the claimant has been unable to work. Dr. Mason has

suggested surgery as of November 18, 2008. The doctor noted that the claimant was unable to work. Again, the Administrative Law Judge has disregarded Dr. Mason's opinion. Based on Dr. Mason's November 18, 2008 report, I find that the claimant is entitled to temporary total disability benefits from November 18, 2008 until a date yet to be determined.

For the aforementioned reasons I must respectfully dissent.

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PHILIP A. HOOD, Commissioner