

NOT DESIGNATED FOR PUBLICATION

BEFORE THE ARKANSAS WORKERS' COMPENSATION COMMISSION

CLAIM NO. F612023

RICK HARMON,
EMPLOYEE

CLAIMANT

GRAVETTE SCHOOL DISTRICT,
EMPLOYER

RESPONDENT

RISK MANAGEMENT RESOURCES,
INSURANCE CARRIER/TPA

RESPONDENT

OPINION FILED OCTOBER 25, 2010

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

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

Respondents represented by the HONORABLE CURTIS L.
NEBBEN, Attorney at Law, Fayetteville, Arkansas.

Decision of Administrative Law Judge: Affirmed and
Adopted.

OPINION AND ORDER

Respondents appeal an opinion and order of the
Administrative Law Judge filed April 26, 2010. In said
order, the Administrative Law Judge made the following
findings of fact and conclusions of law:

1. The Arkansas Workers' Compensation
Commission has jurisdiction of this claim.
2. On October 18, 2006, the relationship of
employee-self insured employer-third party
administrator existed between the parties.
3. On October 18, 2006, the claimant earned
wages sufficient to entitle him to weekly
compensation benefits of \$488.00 for total

disability and \$366.00 for permanent partial disability, when and if such benefits should be appropriate.

4. On October 18, 2006, the claimant sustained a compensable injury to his back.
5. There is no dispute over the payment of medical services incurred for reasonably necessary medical services for the claimant's compensable injury which accrued through August 27, 2009.
6. The medical services provided and recommended to the claimant for his low back and radicular difficulties, by Dr. James Blankenship, represent reasonably necessary medical services for the claimant's compensable back or lumbar injury. Specifically, the greater weight of the credible evidence establishes that these medical services were necessitated by or connected with the claimant's admitted compensable back injury and have a reasonable expectation of reducing or alleviating the damage and effects of this compensable injury.
7. There is no dispute over temporary total disability benefits, at the present time.
8. The respondents have accepted liability for and have paid or are paying permanent partial disability benefits for a permanent physical impairment of 9 percent to the body as whole.
9. The respondents have denied the claimant's entitlement to any additional medical services for his back and radicular difficulties, after August 27, 2009.
10. As no controverted benefits have, at this time, been awarded to the claimant, no controverted attorney's fee can be awarded to this attorney.

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.

Therefore we affirm and adopt the April 26, 2010 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.

A. WATSON BELL, Chairman

PHILIP A. HOOD, Commissioner

Commissioner McKinney dissents.

DISSENTING OPINION

I must respectfully dissent from the majority's opinion finding that the claimant proved by a preponderance of the evidence that he was entitled to additional medical treatment in the form of surgery as recommended by Dr. James Blankenship. Based upon my de

novo review of the record, I find that the claimant has failed to meet his burden of proof.

The evidence demonstrates that the claimant only saw Dr. Blankenship one time. Dr. Blankenship has recommended surgery and the claimant initially indicated he did not wish to proceed with surgery. Now the claimant is asking for the surgery. Three other physicians, two of which saw the claimant on multiple occasions have indicated that the claimant was not a surgical candidate. Dr. Routsong concluded that surgery would "not help his low back arthritic pain." Dr. Morris, a neurologist, did not recommend surgery but, instead, recommended a course of physical therapy and steroid injections. Dr. Felding concluded that the claimant had been fully evaluated and treated and was not a surgical candidate. He indicated the claimant's pain was degenerative, acquired, and congenital.

In my opinion, the majority has arbitrarily disregarded the medical opinions and reports of Dr. Morris, Dr. Armstrong, and Dr. Fielding. Instead, choosing to rely solely upon Dr. Blankenship's report, who has only seen the claimant one time. I give the opinions of those doctors more weight than the opinion of Dr. Blankenship. 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.

Simply put, I cannot find that the claimant is entitled to the surgical recommendation of Dr. Blankenship. When I consider the opinions of three other treating physicians who have opined that the claimant is not a surgical candidate, and the opinion of Dr. Blankenship who has only examined the claimant one time, I cannot find that the claimant has proven by a

preponderance of the evidence that he is entitled to Dr. Blankenship's recommended surgery. Therefore, for all the reasons set forth herein, I must respectfully dissent from the majority's opinion.

KAREN H. MCKINNEY, COMMISSIONER