



ORIGINAL

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See Okla.Sup.Ct.R. 1.200 before citing.

IN THE COURT OF CIVIL APPEALS OF THE STATE OF OKLAHOMA

DIVISION II

FILED
COURT OF CIVIL APPEALS
STATE OF OKLAHOMA

JUL - 2 2025

JOHN D. HADDEN
CLERK

A&A TANK TRUCK CO. and STARR
INDEMNITY INSURANCE COMPANY,)

Petitioners,)

vs.)

DONALD WILLIAMS and
THE WORKERS' COMPENSATION
COMMISSION,)

Respondents.)

Case No.	122 588
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APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

AFFIRMED

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For Respondent

OPINION BY GREGORY C. BLACKWELL, JUDGE:

The petitioners, A&A Tank Truck Co. (A&A), and Starr Indemnity Insurance Company, appeal the Workers' Compensation Commission's order affirming an administrative law judge's decision that respondent, Donald Williams, suffered a compensable neck injury. Upon review, we find that this case was not barred by the applicable statute of limitations, that the

Commission's order affirming the ALJ's decision that Mr. Williams sustained a compensable injury to his neck was supported by substantial competent evidence in the record, and the prior order finding that Mr. Williams sustained a compensable injury to his lumbar spine was not a final order that precluded him from raising additional injuries related to the same injury-causing event.

BACKGROUND

In November 2019, Mr. Williams was driving a truck for A&A that had an uneven and broken seat, which caused him to experience lower back pain. Mr. Williams filed a CC Form 3 on December 30, 2019, alleging a low back injury. On March 24, 2022, a compensability trial was held, and the administrative law judge found Mr. Williams's back injury was compensable, awarding temporary total disability benefits from January 11, 2020, to June 27, 2020.¹ Dr. Wienecke was appointed as Mr. Williams's treating physician who later performed a L5-S1 fusion on Mr. Williams on December 15, 2023.

In April 2023, Mr. Williams began complaining of neck pain. On April 26, 2023, Dr. Wienecke ordered an MRI of Mr. Williams's cervical spine, which was paid for by A&A without objection. On June 23, 2023, after reviewing the MRI, Dr. Wienecke recommended that Mr. Williams undergo a C4-5, C5-6 anterior cervical discectomy and fusion. On June 27, 2023, Mr. Williams filed an amended CC Form 3 alleging injury to his neck. The same ALJ then conducted a compensability trial for Mr. Williams's neck injury on April 15, 2024. The ALJ

¹ The ALJ entered another order on June 9, 2023, ordering temporary total disability from June 26, 2020, to December 14, 2022.

found that Mr. Williams's neck injury was compensable and that it resulted from the November 26, 2019, event. The petitioners appealed the ALJ's decision, and the case was heard by the Workers' Compensation Commission on September 20, 2024. The Commission affirmed the ALJ's decision, and the petitioners now appeal.

STANDARD OF REVIEW

"[T]he law in effect at the time of the injury controls both the award of benefits and the appellate standard of review." *Brown v. Claims Mgmt. Res. Inc.*, 2017 OK 13, ¶9, 391 P.3d 111. Claimant's first alleged date of injury was November 26, 2019. "The Administrative Workers' Compensation Act shall apply only to claims for injuries and death based on accidents which occur on or after February 1, 2014." Title 85A O.S. § 3. The Administrative Workers' Compensation Act provides at 85A O.S. Supp. § 78(C) that this Court may modify, reverse, remand for rehearing or set aside the judgment of the Commission only if it was:

1. In violation of constitutional provisions;
2. In excess of the statutory authority or jurisdiction of the Commission;
3. Made on unlawful procedure;
4. Affected by other error of law;
5. Clearly erroneous in view of the reliable, material, probative and substantial competent evidence;
6. Arbitrary or capricious;
7. Procured by fraud; or
8. Missing findings of fact on issues essential to the decision.

Id. "[W]ith respect to issues of fact, the Commission's order will be affirmed if the record contains substantial evidence in support of the facts upon which it is based and is otherwise free of error." *Mullendore v. Mercy Hosp. Ardmore*, 2019

OK 11, ¶ 13, 438 P.3d 358, 363 (citing *Brown v. Claims Mgmt. Res. Inc.*, 2017 OK 13, ¶ 11, 391 P.3d 111, 115). Generally, a statute-of-limitations question presents a mixed question of law and fact. *Sneed v. McDonnell Douglas*, 1999 OK 84, ¶ 9, 991 P.2d 1001, 1004.

ANALYSIS

The petitioners first allege that the Commission's decision was affected by an error of law because there was evidence in the record that Mr. Williams failed to raise the alleged injury to his cervical spine within one year of the date of the injury. The relevant statute of limitations, 85A O.S. § 69, reads as follows:

A. Time for Filing.

1. A claim for benefits under this act, other than an occupational disease, shall be barred unless it is filed with the Workers' Compensation Commission within one (1) year from the date of the injury or, if the employee has received benefits under this title for the injury, six (6) months from the date of the last issuance of such benefits. For purposes of this section, the date of the injury shall be defined as the date an injury is caused by an accident as set forth in paragraph 9 of Section 2 of this title.

Id. First, we note that the claimant has one year from the date of injury or, if the employee received benefits for the injury, six months from the last date he or she received such benefits. Notably, the petitioners ignore the latter half of 85A O.S. § 69 in their brief and focus entirely on the one-year limitation and the additional requirement in § 69(D), that a latent injury shall not delay or toll the limitations period. According to petitioners, because Mr. Williams did not complain of neck pain until April 2023, it is therefore a latent injury and cannot toll the statute of limitations in this case.

As stated above, 85A O.S. § 69, clearly provides that if Mr. Williams had been receiving benefits under title 85A, the statute of limitations runs after six months from the date of the last issuance of benefits. Here, the petitioners generally deny taking any action to toll the limitations bar as to Mr. Williams's neck injury. However, the petitioners do not dispute that they paid for the MRI² of Mr. Williams's cervical spine which was ordered by Dr. Wienecke after Mr. Williams began complaining of neck pain in late April 2023. The amended CC Form 3 was filed on June 27, 2023. Mr. Williams therefore made his neck injury claim within six months of the date he was last issued benefits. Thus, we agree with the Commission and the ALJ that the claim of neck injury was not time-barred.

Next, petitioners argue that the Commission's decision exceeded statutory authority, was affected by an error of law, and was clearly erroneous based on evidence in the record that Mr. Williams's neck injury was not supported by objective medical evidence. The petitioners argue that because Mr. Williams was injured on November 26, 2019, and he did not complain of neck pain until April

² At the hearing before the ALJ, counsel for Mr. Williams affirmatively stated that there was an order from Neuroscience Specialists requesting the MRI of the cervical spine without contrast, and it was addressed to Sedgwick Claims with the policy number, payor address, and A&A listed as the guarantor. See Tr. (Apr. 15, 2024), 8; and ROA 218. Meanwhile, counsel for the petitioners stated that he "presumed" that the petitioners paid for the MRI of the cervical spine, but they did not do so with the "intent of providing treatment to a new body part." Tr. (Apr. 15, 2024), 8. Tolling of the statute of limitations has been allowed where the employer's actions evince a "conscious recognition of liability" for the injury sustained: (a) by the provision of medical treatment, *Smedley v. State Industrial Court*, 1977 OK 55, 562 P.2d 847; and (b) by payment for medical treatment—*California Co. v. State Industrial Court*, 1960 OK 80, 350 P.2d 957; *Continental Oil Co. v. Wilkerson*, 1933 OK 356, 22 P.2d 1004. Thus, any intent to provide treatment to a new injury is not relevant to the analysis as long as the petitioners paid for treatment, which they do not dispute, they demonstrated conscious recognition for liability and tolled the statute of limitations.

2023, his claimed injury cannot qualify as aggravation of a preexisting condition. Further, the petitioners suggest that “Dr. Wienecke admitted there was no objective medical evidence showing the neck was injured in the November 26, 2019, single event accident.” *Brief-in-Chief*, 13. The petitioners correctly point out that Mr. Williams must prove, by a preponderance of the evidence, that he suffered a compensable injury, and that the injury must be established by medical evidence supported by objective findings. See 85A O.S. Supp. 2019 § 2(9)(c-d).

As stated above, we will affirm the Commission’s order that Mr. Williams’s neck injury is compensable if the record contains substantial evidence in support of the facts upon which it is based and is otherwise free of error. *Mullendore v. Mercy Hosp. Ardmore*, 2019 OK 11, ¶ 13, 438 P.3d 358, 363. In his deposition, Dr. Wienecke testified that the MRI of Mr. Williams’s cervical spine revealed “pretty bad stenosis at the levels of C4-5 and C5-6” which was in turn causing myelopathy.³ Tr. (January 5, 2024) 8-9. Dr. Wienecke noted that in hindsight, some of Mr. William’s complaints that he thought were related to his lumbar injury were also likely related to the neck, such as his leg pain and back pain. *Id.* at 8. Dr. Wienecke testified that it was his opinion, within a reasonable degree of medical certainty, that Mr. William’s injury to his cervical spine was directly related to his on-the-job injury sustained on November 26, 2019. *Id.* at 11-12.

³ Dr. Wienecke further explained that myelopathy “means your spinal cord’s not working right,” which was likely causing Mr. Williams’s severe back and leg pain. Tr. (January 5, 2024) 9.

Dr. Wienecke also added that “my opinion is, he’s had problems with his neck all along; we just didn’t know it. And those problems in his neck that we’ve identified now in June 2023 are, in part, responsible for his persistent lower back and leg complaints.” *Id.* at 24. He also opined that the findings on the MRI conducted in June were definitively related to the injury that Mr. Williams sustained in November 2019. *Id.* at 37.

While the petitioners contend that Dr. Wienecke opined that there was no objective evidence of a neck injury, Dr. Wienecke testified that there was indeed objective medical evidence of neck injury because there was an MRI that showed the conditions that he later diagnosed. This MRI, coupled with Mr. Williams’s consistent complaints of nerve pain, lower back pain, and leg pain, since 2019, led to Dr. Wienecke’s conclusion that the neck injury was sustained and/or aggravated by the November 2019 event. Title 85A O.S. Supp. 2019 § 2(9)(c-d) provides that a compensable injury “shall be established by medical evidence support by objective findings as defined in paragraph 31 of this section.” Objective findings are defined in the act as “findings which cannot come under the voluntary control of the patient.” *Id.* at 31(a)(1). Further, the Act dictates that “opinions addressing compensability and permanent disability shall be stated within a reasonable degree of medical certainty.” *Id.* at 31(b).

Here, we have objective evidence by way of the cervical MRI which led to Dr. Wienecke’s findings of stenosis, myelopathy, and recommendation of surgery. These findings demonstrate an injury to the neck, and the record reflects that Dr. Wienecke opined with a reasonable degree of medical certainty

that the November 26, 2019, on-the-job event caused or aggravated that neck injury. There were other reports and opinions of other medical professionals to the contrary, and the petitioners essentially ask this Court to reweigh the evidence and resolve the conflicts in the evidence in their favor. However, our role is not to reweigh the evidence, but to determine whether the decision is clearly erroneous in view of the reliable, material, probative and substantial competent evidence. *Breckenridge v. Bray Lines*, 1989 OK 120, ¶ 6, 782 P.2d 909, 910. See also *Exterran Holdings, Inc. v. Abonza*, 2023 OK CIV APP 33, ¶ 49, 537 P.3d 152, 161 (citing *Wiljo Interiors, Inc. v. Rials*, 2017 OK CIV APP 27, ¶ 15, 394 P.3d 327). We find the record contains reliable, material, probative and substantial competent evidence supporting the ALJ's decision, affirmed by the Commission, of a compensable injury to Mr. Williams's neck. Thus, we are unable to find the decision is clearly erroneous.

Lastly, petitioners argue that the Commission's decision was affected by error of law because the only claimed injury in the previous trial held on March 24, 2022, was to Mr. Williams's lumbar spine. Therefore, the April 14, 2022, order determining Mr. Williams's injury to his lumbar spine was compensable is a final order and Mr. Williams did not properly reserve the issues regarding any additional injuries. In support of their argument, petitioners cite 85A O.S. § 80(A) which states: "A final order for permanent disability is a final adjudication of all issues pending in the claim unless reserved in the order or by operation of law." Although no issues regarding injuries other than the lumbar spine were specifically reserved, as Mr. Williams points out, there has been no adjudication

as to the permanent partial disability rating of Mr. Williams to date. The Oklahoma Supreme Court in, *Pruitt v. Mid-Continent Pipe Line Co.*, 1961 OK 96, 361 P.2d 494, recognized that an order allowing benefits for temporary total disability during the continuance of the claimant's healing period, differs from a final award granting compensation for permanent disability. The Court specifically held: "An order allowing benefits during the continuance of the healing period is neither accumulative in its nature, nor does it constitute a final award." *Id.* at ¶ 9.

Additionally, Oklahoma courts have consistently held that "an injured employee who has been paid temporary total disability benefits may have a recurrence of temporary total disability, and if there is any competent evidence reasonably tending to show that such temporary total disability is a result of the *same accidental injury*, an award based on such evidence will not be disturbed." *Simmons Indus. v. Hartman*, 1990 OK CIV APP 110, ¶ 20, 807 P.2d 294, 298 (emphasis supplied) (citing *Pittsburgh Plate Glass Co. v. Davison*, 1942 OK 85, 122 P.2d 388 and *Amerada Petroleum Corp. v. White*, 1937 OK 25, 64 P.2d 660). Further, courts have also held that a claimant is not required to set out his injuries in his Form 3 with exact precision, *National Zinc Co. v. Carter*, 1968 OK 82, 442 P.2d 488, and therefore it follows that the failure of the claimant to allege an injury to his neck in his Form 3 does not preclude recovery for such injury "if indeed it was caused by the accident in question." *Simmons Indus.*, 1990 OK CIV APP 110, ¶ 21 (emphasis supplied) (citing *Davis-Wharton Drilling Co. v. James*, 337 P.2d 1094, 1959 OK 55).

Here, Mr. Williams had been paid temporary total disability benefits for an injury to his lumbar spine on November 26, 2019. Now, he is experiencing neck pain and there was competent evidence in the record reasonably tending to show that his neck injury was the result of the same accident that caused the injury to his lumbar spine. Thus, we find it clear Mr. Williams did not need to “reserve” additional injuries and he was entitled to amend his Form 3 in the event of recurrence of temporary total disability. Upon review of the record, we find the Commission’s decision is not affected by an error of law on this issue, and Mr. Williams’s neck injury was properly before the ALJ and the Commission because the April 14, 2022, order determining the lumbar injury was compensable was not a final order preventing Mr. Williams from recovering for additional injuries resulting from the same accident.

AFFIRMED.

WISEMAN, P.J., and FISCHER, J., concur.

July 2, 2025