DIVISION IV

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
ANDREE LAYTON ROAF, Judge

CA06-222

September 27, 2006

FRANCIS TUCKER APPELLANT	APPEAL FROM THE ARKANSAS WORKERS' COMPENSATION COMMISSION [F013498 & F304405]
v.	
GEORGIA PACIFIC CORPORATION and SEDGWICK CMS, INC. APPELLEES	AFFIRMED

This is a workers' compensation case, and the sole issue is whether substantial evidence supports the Arkansas Workers' Compensation Commission's decision that appellant Francis Tucker failed to prove by a preponderance of the evidence that she is entitled to benefits relating to a separate and additional impairment rating to the body as a whole in addition to the benefits she will receive for sustaining a scheduled leg injury. The Commission decided that Tucker was not entitled to a separate and additional impairment rating to the body as a whole. We affirm.

Tucker sustained an admittedly compensable injury to her left ankle on October 30, 2000, when she fell from a ladder while working for appellee Georgia Pacific Corporation. Appellees Georgia Pacific and Sedgwick CMS, Inc., accepted Tucker's injury as compensable and paid her medical expenses. They further paid all temporary total disability benefits owed to Tucker prior to May 7, 2003, when Dr. Steven Kulik opined that Tucker had reached maximum medical improvement. On that date, Dr. Kulik further opined that Tucker had sustained a permanent

impairment rating of fourteen percent to her lower left extremity, which translates into a nineteen percent impairment to her foot. Dr. Kulik also assigned an additional fifteen percent impairment rating to the body as a whole, and this whole body rating was related to Tucker's use of an ankle-foot orthosis (AFO) brace.

Tucker underwent two subsequent surgeries on August 29, 2003, and March 26, 2004. On September 9, 2004, Dr. Kulik opined that the nineteen percent impairment rating to Tucker's foot remained unchanged but that the separate rating to the body as a whole should now be twenty percent because of Tucker's "use of a cane instead of a brace." Georgia Pacific and Sedgwick CMS again denied payment of the additional rating to the body as a whole on the basis that Tucker's injury is a scheduled injury and Tucker is not permanently and totally disabled.

Tucker testified that she still has considerable amounts of pain when she walks and that she wears her AFO brace "the majority of the time." She also uses a cane even when she wears her brace. Tucker explained that her ankle is slightly twisted because her bones did not heal straight. According to Tucker, the longest she can stand without unbearable pain is thirty minutes.

The administrative law judge (ALJ) found that, because Tucker's injury was a scheduled injury, she was not entitled to a separate and additional body as a whole rating. The Commission affirmed and adopted the ALJ's decision. Tucker appeals the Commission's decision.

In reviewing decisions from the Workers' Compensation Commission, this court views the evidence and all reasonable inferences in the light most favorable to the Commission's findings, and we affirm if substantial evidence supports the decision. *Wal-Mart Stores, Inc. v. Brown*, 82 Ark. App. 600, 120 S.W.3d 153 (2003). Substantial evidence exists if reasonable minds could reach the same conclusion. *Id*. The Commission has the duty of weighing medical evidence, and the

resolution of conflicting evidence is a question of fact for the Commission. *Stone v. Dollar Gen. Stores*, 91 Ark. App. 260, ____ S.W.3d ____ (June 8, 2005).

The relevant statute in this case is Ark. Code Ann. § 11-9-521 (Repl. 2002), which deals with scheduled injuries, including injuries to the leg, foot, and toes. Section (a) provides, in relevant part, that "[a]n employee who sustains a permanent compensable injury scheduled in this section shall receive … weekly benefits in the amount of the permanent partial disability rate attributable to the injury, for that period of time set out" in the schedule. Ark. Code Ann. § 11-9-521(a). In this case, the relevant time period for the payment of weekly benefits is 131 weeks. Ark. Code Ann. § 11-9-521(a)(11). "Compensation for permanent partial loss or loss of use of a member shall be for the proportionate loss or loss of use of the member." Ark. Code Ann. § 11-9-521(f). It is well-established under Arkansas workers' compensation law that, absent a finding of total disability, a scheduled injury cannot be apportioned to the body as a whole. *Hill v. White Rodgers*, 10 Ark. App. 402, 665 S.W.2d 292 (1984). Here, Tucker has not alleged permanent and total disability. Thus, Arkansas case law makes clear that her scheduled injury cannot be apportioned to the body as a whole. *See Hill*, *supra*.

Tucker argues in the alternative that, if this court finds that she is not entitled to an additional rating to the body as a whole, the rating should be converted to a rating to her foot, which would result in a fifty-three percent rating to the foot. Tucker in essence asks this court to validate the whole-body rating by simply converting it to an additional lower-extremity rating. Tucker cites no convincing authority for this proposition.

It would be inappropriate to convert the whole-body rating to a lower-extremity rating and thereby validate the rating when the original whole-body rating was clearly *invalid* under Arkansas law. According to Ark. Code Ann. § 11-9-521, scheduled injury awards are all the permanent

compensation an injured worker is entitled to absent a showing of total disability. Tucker sustained a scheduled injury and is not totally disabled. Thus, in accordance with established Arkansas case law, the Commission's decision that Tucker is not entitled to an additional and separate whole-body rating is correct.

Georgia Pacific and Sedgwick CMS alternatively contend that the body as a whole impairment rating assigned by Dr. Kulik is not supported by objective and measurable findings, as required by Ark. Code Ann. § 11-9-704(c) (Repl. 2002), that her use of the devices upon which the rating was based is solely for the control of pain, and the rating is therefore invalid. This court need not consider this issue because we have concluded that Tucker is not entitled to a separate and additional impairment rating pursuant to the scheduled-injury statute.

Affirmed.

GRIFFEN and VAUGHT, JJ., agree.