

NOT DESIGNATED FOR PUBLICATION  
ARKANSAS COURT OF APPEALS  
D. P. MARSHALL JR., Judge

DIVISION IV

CA06-1104

5 September 2007

KEITH McFARLAND,  
APPELLANT

AN APPEAL FROM THE WORKERS'  
COMPENSATION COMMISSION  
[ F308493]

v.

EZ LOADER BOAT TRAILER and  
RISK MANAGEMENT RESOURCES,  
APPELLEES

AFFIRMED

Keith McFarland, a finishing-line worker at EZ Loader Boat Trailer, claimed that he injured his back while pulling or lifting a trailer and developed carpal tunnel syndrome while on the job. He sought medical and temporary total disability benefits. The Workers' Compensation Commission adopted the Administrative Law Judge's opinion and denied his claims, concluding that McFarland failed to prove that he sustained compensable injuries. The Commission also found that McFarland's constitutional challenges to the Workers' Compensation Act lacked merit. McFarland appeals on all these issues.

## I.

McFarland first argues that substantial evidence does not support the Commission's finding that he failed to establish a compensable back injury in 2003. To get benefits, McFarland had to prove: (1) that he suffered an injury arising out of and in the course of his employment with EZ Loader; (2) that the injury was caused by a specific incident identifiable by time and place of occurrence; (3) that the injury caused internal or external physical harm to his body, which required medical services or resulted in disability or death; and (4) that the injury was established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(A)(i) & (4)(D) (Supp. 2007).

McFarland suffered his first back injury in 1997 when he was pulling a motor out of his truck at home. He started working for EZ Loader in July 1999. McFarland went to see his doctor in November 1999 because of back, shoulder, hip, and neck pain. He also suffered a back injury in 2000. He went to his doctor after that injury and complained of sharp pain in his lower back from picking up a trailer.

McFarland claims that his present back injury resulted from a boat-trailer lifting incident in April 2003. But, as the ALJ pointed out, McFarland's 2003 medical records do not mention a boat-trailer lifting incident in 2003. Instead, his doctor's notes from April 2003 describe McFarland's back pain as "chronic." In July 2003, McFarland's doctor opined that an MRI taken that month showed bulging discs that were not present

on an MRI taken in 1998. In his doctor's opinion, the bulging discs represented a new injury. This medical evidence, however, shows that McFarland injured his back sometime between 1998 and 2003. It does not show that he suffered a specific-incident injury in April 2003. In August 2003, McFarland's doctor wrote a letter stating, "[i]t is my opinion, within a reasonable degree of medical certainty, that [McFarland's] back injury and his need for medical treatment and/or surgery is a direct result of his arduous employment with [EZ Loader]." This letter is more evidence of McFarland's chronic back problems. It likewise does not establish that McFarland suffered any specific-incident injury in April 2003.

McFarland also failed to mention the boat-trailer incident in his deposition, which he gave in the same year as his alleged injury. In that deposition, McFarland could not pinpoint any specific incident that caused his new back injury. Because McFarland failed to prove that he suffered an injury caused by a specific incident arising out of and in the course of his employment with EZ Loader, substantial evidence supports the Commission's findings about his alleged lower-back injury. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 265, 209 S.W.3d 445, 448 (2005).

## II.

McFarland also contends that substantial evidence does not support the Commission's finding that he failed to establish a compensable carpal tunnel injury

while working for EZ Loader. Here McFarland had to prove: (1) that his carpal tunnel syndrome arose out of and in the course of his employment; (2) that the injury caused external or internal physical harm to his body that required medical services or resulted in disability or death; (3) that the injury was the major cause of the disability or need for treatment; and (4) that the injury is established by medical evidence supported by objective findings. *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 304, 40 S.W.3d 760, 766 (2001).

McFarland argues that he developed carpal tunnel syndrome as a result of his work on the finish line at EZ Loader in late 2001 or early 2002. McFarland testified that he was required to finish about forty trailers a day and at times was required to finish as many as sixty or seventy trailers a day. On the finish line he did wiring, put on the lights, and did anything else the trailers needed. McFarland underwent nerve-conduction studies, which produced findings consistent with carpal tunnel syndrome. In response to a hypothetical question, his doctor testified in a deposition that he thought a work activity, such as wiring trailers, would create some inflammation and ultimately cause carpal tunnel syndrome. McFarland testified, however, that his problems with his right wrist started when his main job consisted of dropping trailers, not when he was wiring them. He explained that, as a dropper, he had to “drop the trailer and pull the cart out and take the trailer out. You check the lights to make sure they work.”

The Commission has the exclusive function of determining all the witnesses' credibility and the weight of all the evidence. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 279–80, 72 S.W.3d 560, 565 (2002). From the evidence presented, the ALJ and the Commission were unable to determine the percentage of time in late 2001 and early 2002 that McFarland spent wiring trailers, as opposed to doing many other tasks at work, such as dropping trailers. Viewing the record in the light most favorable to the ALJ's and the Commission's findings, substantial evidence supports those findings. *Stone*, 91 Ark. App. at 265, 209 S.W.3d at 448.

### III.

Finally, McFarland makes three constitutional arguments, which are identical to those presented to this court in *Long v. Wal-Mart Stores, Inc.*, 98 Ark. App. 70, 87–90, \_\_\_ S.W.3d \_\_\_, \_\_\_ (2007), and in *Murphy v. Forsgren, Inc.*, \_\_\_ Ark. App. \_\_\_, \_\_\_, \_\_\_ S.W.3d \_\_\_, \_\_\_ (June 13, 2007). McFarland argues that Arkansas's executive branch and private interests have exerted pressure on the workers' compensation ALJs and Commissioners. This pressure allegedly infringed on these decision-makers' independence and resulted in actual bias and the appearance of bias. He also claims that this pressure violates due-process rights of the parties appearing before the agency and renders the agency's procedures void. McFarland also argues that the quasi-judicial procedure established by the Workers' Compensation Act violates the separation of powers established by the Arkansas Constitution. In *Long*—a case decided by the same ALJ and same Commissioners as the present case—this court

analyzed the same constitutional challenges to the Act, this particular ALJ, and these Commissioners and held that all these challenges lacked merit. Just as in *Long*, we find no merit in McFarland's constitutional arguments.

Affirmed.

BIRD and HEFFLEY, JJ., agree.