

ARKANSAS COURT OF APPEALSDIVISION IV
No. CA 11-723

JESSIE CONTRERAS

APPELLANT

V.

PINNACLE FOODS CORPORATION
and AMERICAN ZURICH INSURANCE
COMPANY

APPELLEES

Opinion Delivered DECEMBER 14, 2011APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION, [NO. G004058]

AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Jessie Contreras appeals the Workers' Compensation Commission's decision that he was not entitled to benefits pursuant to Arkansas Code Annotated section 11-9-505(a) (Repl. 2002). Because the Commission's opinion displays a substantial basis for the denial of this aspect of his claim, we affirm.

Appellant suffered an admittedly compensable hot-water-burn injury to his right arm and chest while at work for appellee Pinnacle Foods Corporation on May 3, 2010. He was released from treatment on June 28, 2010 (the stipulated date of his maximum medical improvement). Pinnacle Foods requested that appellant first be evaluated by their company physician prior to returning to work. The parties litigated appellant's entitlement to benefits pursuant to section 11-9-505(a), wherein appellant contended that his employer refused to return him to work without reasonable cause. The administrative law judge found that appellant did not establish entitlement to any such benefits because the employer's refusal to

return him to work was not shown to be “without reasonable cause.”¹ The Commission affirmed and adopted the ALJ’s decision. Appellant appeals the denial of section 11-9-505(a) benefits, contending that the denial is not supported by substantial evidence. We disagree and affirm.

When an appeal is taken from the denial of a claim for benefits by the Workers’ Compensation Commission, the substantial-evidence standard of review requires that we affirm if the Commission’s opinion contains a substantial basis for the denial of relief. *Powers v. City of Fayetteville*, 97 Ark. App. 251, 248 S.W.3d 516 (1997). We view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission’s findings. *Id.* Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.* The question is not whether the evidence would have supported findings contrary to the ones made by the Commission; there may be substantial evidence to support the Commission’s decision even though we might have reached a different conclusion if we had been sitting as the trier of fact or hearing the case de novo. *Id.* The determination of the credibility and weight of evidence is within the sole province of the Commission. *Id.*

Appellant contends that the Commission erred in its application of Arkansas Code Annotated section 11-9-505, titled “Additional compensation—Rehabilitation,” which provides in relevant part:

¹The parties also litigated appellant’s entitlement to temporary total disability benefits. The ALJ awarded appellant TTD benefits from the day after his injury (May 4) to the date he was released from medical care (June 28). These benefits are not an issue on appeal.

(a)(1) Any employer who without reasonable cause refuses to return an employee who is injured in the course of employment to work, where suitable employment is available within the employee's physical and mental limitations, upon order of the Workers' Compensation Commission, and in addition to other benefits, shall be liable to pay to the employee the difference between benefits received and the average weekly wages lost during the period of the refusal, for a period not exceeding one (1) year.

A claimant seeking benefits pursuant to this statutory provision must prove by a preponderance of the evidence that he sustained a compensable injury; that suitable employment within his physical and mental limitations is available with the employer; that the employer refused to return him to work; and that the refusal is without reasonable cause. *Nestle USA, Inc. v. Drone*, 2009 Ark. App. 311, 307 S.W.3d 54. The ALJ determined that although appellant proved that he had a compensable injury and that his employer refused to return him to work, appellant failed to prove that his job on the clean-up crew was suitable work and, more importantly, that the employer's refusal lacked a reasonable cause. We hold that there is a substantial basis for this finding and conclusion.

The testimony at the hearing included that of appellant, a 50-year-old man who had worked on kitchen clean-up crews for Pinnacle Foods dating back to 1990. On the night of May 3, 2010, appellant was cleaning the plant's "potato system" machine when he was struck with very hot water on his right arm and chest. He was taken to Washington Regional Medical Center's emergency room, diagnosed with first- and second-degree burns, hospitalized overnight, and then referred to Washington Regional's Wound Care Clinic.

The employer's environmental health and safety manager, William Medley, testified that the employer wanted appellant to be treated by the company doctor, Dr. Rebecca Lewis,

for his burns. He said an appointment was made for appellant to see Dr. Lewis on May 5, but appellant's son said appellant was not going to treat with her but instead was going to be treated at the Wound Care Clinic. Medley stated that appellant came to their facility on May 12 to complete paperwork. At that time, Medley asked appellant to call back so that an appointment with Dr. Lewis could be made, but appellant never called back.

Appellant went to the Wound Care Clinic for burn care and to have his wound dressings changed. Appellant was taking pain medications; his son primarily drove him to the Clinic. On June 23, 2010, appellant presented to the Clinic to have a red rash on his arm checked. While there, he was advised about sun and skin protection and encouraged to wear a long-sleeved shirt upon return to work. The Clinic provided appellant a one-page pre-printed "return to work" form dated June 23. "Jessee Contreras" and "6-28-10" were handwritten in the corresponding blank spaces for the patient's name and date of release. The form contained a list of possible restrictions, but an "x" was handwritten by "None. Return to regular duty." The form had four physician names on it; "Gina Hudec M.D." was circled.

Medley said that the next time he heard from appellant was when appellant presented this return-to-work note to him on June 28. Medley said this was the only medical record he had of appellant's treatment. Medley expressed concern about putting appellant back to work prior to being evaluated by Dr. Lewis. Medley testified that he did not know if the physicians at the Clinic were familiar with the hot, steamy conditions of appellant's sanitation job in their facility. Medley told appellant there was a problem because he had not been seen by Dr. Lewis. Appellant responded that he had hired an attorney, whose name he could not

recall. Medley asked appellant to call him back with the attorney's name. Appellant did not call back or ever respond.

On this evidence, the ALJ found that the employer was not provided any medical documentation of appellant's condition prior to being presented this return-to-work form, and it was not unreasonable for the employer to ask him to be evaluated by the company physician prior to returning him to work. It was appellant's burden to prove by a preponderance that the refusal was "without reasonable cause," which necessarily turned on the particular facts of this claim. *Congo Stove, Fireplace & Patio, Inc. v. Rickenbacker*, 77 Ark. App. 346, 74 S.W.3d 238 (2002). Given our standard of review, there is a substantial basis for the Commission's denial of benefits.

We affirm.

GLADWIN and HOOFFMAN, JJ., agree.