

ARKANSAS COURT OF APPEALSDIVISION I
No. CA 11-694SOUTHWESTERN ENERGY CO.,
INC. and CHARTIS INSURANCE
APPELLANTS

V.

CHARLIE EZELL

APPELLEE

Opinion Delivered December 14, 2011APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F711313]

REVERSED AND REMANDED

ROBIN F. WYNNE, Judge

Appellants Southwestern Energy Company, Inc. and Chartis Insurance appeal from the Arkansas Workers' Compensation Commission's award of wage-loss-disability benefits to appellee Charlie Ezell. We reverse and remand.

Charlie Ezell sustained a compensable facial injury on October 23, 2007, while working as a driller for Southwestern Energy Company. The injury resulted in two surgeries, extensive dental work, and ongoing facial pain. Mr. Ezell was off work for several months. He eventually returned to work at light duty but was back on full duty at his previous pay level by the summer of 2008. At that time, he was still receiving medical treatment related to his compensable injury. However, Mr. Ezell never complained of any physical difficulties with performing his job.

On June 19, 2008, while on the job, Mr. Ezell made a costly drilling error that caused damage to the company's equipment. As a result, he was temporarily demoted to assistant

driller, a position that paid a few dollars an hour less than his pay as a driller. However, instead of accepting the temporary demotion, Mr. Ezell voluntarily quit. According to his supervisors, the demotion and Mr. Ezell's separation from the company had nothing to do with any physical problem and were solely related to Mr. Ezell's mistake on the rig. After walking off the job, Mr. Ezell did not look for work elsewhere. Instead, he drew unemployment benefits until they were exhausted and applied for Social Security disability benefits, which were twice denied.

After leaving his job, Mr. Ezell continued receiving treatment for his facial injury. He also sought additional treatment for alleged neck and back injuries, which he claimed were related to the compensable injury. By June 8, 2010, Dr. Barry Baskin, Mr. Ezell's treating physician, opined that he had reached maximum medical improvement. Dr. Baskin assigned Mr. Ezell a permanent-partial-impairment rating of ten percent based on his impression that he had sustained an injury to the trigeminal nerve. Appellants denied payment for any treatment related to Mr. Ezell's neck and back. Mr. Ezell filed a workers' compensation claim seeking benefits related to his neck and back, temporary-total-disability benefits from February 13, 2009, to a date to be determined, and wage-loss-disability benefits.

After a hearing, an administrative law judge (ALJ) found that Mr. Ezell had failed to prove the compensability of his neck and back injuries. This finding rendered the temporary-total-disability claim moot. As for the wage-loss-disability claim, the ALJ found that Mr. Ezell voluntarily quit his job with Southwestern Energy due to the temporary demotion and that the demotion was not due to any physical inability to perform his work. Nonetheless, based

on Dr. Baskin's opinion that Mr. Ezell had suffered an injury to the trigeminal nerve, the ALJ awarded him twelve-percent wage-loss disability in excess of his ten-percent anatomical-impairment rating. Appellants appealed to the Commission, which affirmed and adopted the ALJ's opinion in its two-to-one decision. Appellants then appealed to this court.

In reviewing a decision from the Arkansas Workers' Compensation Commission, we view the evidence and all reasonable inferences in the light most favorable to the Commission's findings. *Staffmark Invs., LLC v. King*, 2009 Ark. App. 830, at 2. We affirm those findings if they are supported by substantial evidence, which is relevant evidence that a reasonable person might accept as adequate to support a conclusion. *Id.* We will not reverse the decision of the Commission unless we are convinced that fair-minded persons considering the same facts could not have reached the same conclusions. *Id.* The question is not whether the evidence would have supported findings contrary to the ones made by the Commission; rather, it is whether there is 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. *Burris v. L & B Moving Storage*, 83 Ark. App. 290, 293, 123 S.W.3d 123, 125–26 (2003). It is the function of the Commission, not this court, to determine the credibility of witnesses and the weight to be given to the evidence. *Whaley v. Hardee's*, 51 Ark. App. 166, 168, 912 S.W.2d 14, 15 (1995).

When a claimant has been assigned an anatomical-impairment rating to the body as a whole, the Commission may increase the disability rating and find a claimant permanently disabled based on the wage-loss factor. *Lee v. Alcoa Extrusion, Inc.*, 89 Ark. App. 228, 233,

201 S.W.3d 449, 454 (2005). The wage-loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. *Enter. Prods. Co. v. Leach*, 2009 Ark. App. 148, at 3, 316 S.W.3d 253, 255. When determining wage-loss disability, the Commission should consider, in addition to medical evidence, the appellant's age, education, experience, and other factors affecting wage loss. *Glass v. Edens*, 233 Ark. 786, 788, 346 S.W.2d 685, 687 (1961). Other factors may include—but are not limited to—motivation to return to work, post-injury earnings, credibility, and demeanor. *Curry v. Franklin Elec.*, 32 Ark. App. 168, 173, 798 S.W.2d 130, 133 (1990). A lack of interest in pursuing employment impedes the assessment of the claimant's loss of earning capacity, although it is not a complete bar. *Logan County v. McDonald*, 90 Ark. App. 409, 417, 206 S.W.3d 258, 263 (2005). The Commission may use its own superior knowledge of industrial demands, limitations, and requirements in conjunction with the evidence to determine wage-loss disability. *Taggart v. Mid Am. Packaging*, 2009 Ark. App. 335, at 5–6, 308 S.W.3d 643, 647. However, if a claimant returns to work at wages equal to or greater than his average weekly wage at the time of the injury, he is not entitled to permanent-partial-disability benefits in excess of his anatomical-impairment rating. Ark. Code Ann. § 11-9-522(b)(2) (Repl. 2002).

In this case, there is not substantial evidence to support the Commission's award of wage-loss-disability benefits. The evidence in the record indicates—and the Commission found—that Mr. Ezell's separation from his job had nothing to do with any physical impairment. Mr. Ezell quit because he did not want to be demoted, and the demotion was a result of Mr. Ezell's failure to follow proper procedures, not an inability to perform his job.

Mr. Ezell did not attempt to find other employment after leaving his job. Thus, it was not his compensable injury that affected his ability to earn a livelihood; it was his personal choice. Furthermore, the record indicates that the demotion to assistant driller was meant to be a temporary move, and any decrease in wages, had Mr. Ezell accepted the demotion, would not have been permanent. Notwithstanding his impairment rating and his ongoing medical treatment, the evidence shows that Mr. Ezell returned to work in the same position and at the same wages he received at the time of his injury before voluntarily quitting for reasons unrelated to his injury. Therefore, he was not entitled to any permanent-partial-disability benefits in excess of his impairment rating. Despite the fact that the Commission affirmed and adopted the ALJ's findings, we are convinced that fair-minded persons considering the same facts could not have reached the same conclusion as to the wage-loss-disability issue. We reverse and remand this case to the Commission to issue a decision consistent with this opinion.

Reversed and remanded.

ABRAMSON and BROWN, JJ., agree.