

**ARKANSAS COURT OF APPEALS**DIVISION III  
No. CV-14-50

BRYAN AYERS

APPELLANT

V.

CITY OF ASHDOWN and ARKANSAS  
MUNICIPAL LEAGUE WORKERS'  
COMPENSATION TRUST

APPELLEES

Opinion Delivered April 30, 2014

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION [NO. G209452]

AFFIRMED

**KENNETH S. HIXSON, Judge**

Appellant Bryan Ayers brought a workers' compensation claim against appellee City of Ashdown, alleging that he sustained a compensable low-back injury while working for the appellee on August 10, 2012. City of Ashdown controverted Mr. Ayers' claim, and after a hearing the Administrative Law Judge denied compensability. The ALJ's decision was based on the findings that Mr. Ayers failed to prove that his back injury arose out of the course and in the scope of his employment, and that Mr. Ayers failed to prove an injury caused by a specific incident identifiable by time and place of occurrence. The Workers' Compensation Commission affirmed and adopted the ALJ's decision.

Mr. Ayers now appeals from the Commission's decision denying compensability. On appeal, he argues that the Commission erred in finding that he failed to prove a work-related injury to his back. We affirm.

A claimant has the burden of proving the compensability of his claim by a preponderance of the evidence. *Williams v. Baldor Elec. Co.*, 2014 Ark. App. 62. To prove the occurrence of a specific-incident compensable injury, the claimant must establish by a preponderance of the evidence (1) that an injury occurred arising out of and in the scope of employment; (2) that the injury caused internal or external harm to the body which required medical services or resulted in disability or death; (3) that the injury is established by medical evidence supported by objective findings; and (4) that the injury was caused by a specific incident and is identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102(4)(A)(i) (Repl. 2012); *Pafford Med. Billing Servs., Inc. v. Smith*, 2011 Ark. App. 180, 381 S.W.3d 921.

When the Commission denies benefits because the claimant has failed to meet his burden of proof, the substantial-evidence standard of review requires that we affirm if the Commission's decision displays a substantial basis for the denial of relief. *Frances v. Gaylord Container Corp.*, 341 Ark. 527, 20 S.W.3d 280 (2000). We view the evidence in the light most favorable to the Commission's decision, which will be affirmed when it is supported by substantial evidence. *Parker v. Comcast Cable Corp.*, 100 Ark. App. 400, 269 S.W.3d 391 (2007). The issue is not whether the appellate court might have reached a different result from the Commission, but whether reasonable minds could reach the result found by the Commission; if so, the appellate court must affirm. *Id.* We defer to the Commission's findings of credibility and the resolution of conflicting evidence. *Welcher v. Davis Nursing Home*, 2009 Ark. App. 831.

Mr. Ayers worked for City of Ashdown as a general laborer. His job duties included lifting and carrying pipe. Mr. Ayers alleged that he sustained a compensable back injury while carrying pipe on the morning of August 10, 2012. Mr. Ayers testified:

I was carrying pipe back and forth over to the job site. It was PVC pipe, approximately eighteen feet long. Those eighteen-foot long PVC pipes typically weigh about fifty pounds. I would generally carry one piece of pipe at a time. I would carry the pipe on my shoulder. At the time I was injured I was carrying the piece of pipe. I came across the street and I had to step over the ditch, the excavation ditch, and when I stepped, I noticed that the female end was on the wrong end, so when I stepped across the ditch, I turned trying to correct which end was supposed to go in the right place, and when I did, my back snapped.

According to Mr. Ayers, on the day of his injury he reported it to his supervisor, Bill Duckett. Mr. Ayers also testified that during a break he told some co-workers about his work-related injury. Mr. Ayers finished the work day on August 10, 2012.

On the following Monday, which was August 13, 2012, Mr. Ayers worked half a day and then visited a chiropractor. The chiropractor gave him no relief, and Mr. Ayers visited Dr. Lawson Kile on August 14, 2012. Dr. Kile's initial report gave the following history:

This is a 41-year-old white male who comes in for severe low back pain that is going down into his right leg for about the last six days. He tells me that he works for the Ashdown Water Department, and he was carrying a pipe that was 18-foot long and about 6 inches in diameter. He tells me that he stepped to cross a ditch and when he did, the load of the pipe shifted and he turned to catch it and he tells me that he had instant pain. This happened about six days ago and he tells me that since that time it has gotten progressively worse.

Dr. Kile assessed low-back pain with radiation into the right lower extremity, and he treated appellant with steroid injections and medication. Dr. Kile took appellant off work for a few days and returned him to light duty on August 20, 2012. In a report dated August 29, 2012, Dr. Kile returned Mr. Ayers to work without restrictions beginning on September 3, 2012.

Mr. Ayers worked full duty from that date until being terminated on October 1, 2012, for sleeping on the job.

Mr. Ayers sought no medical treatment for his low back from August 29 through October 29, 2012. Mr. Ayers visited Dr. Kile on October 29, 2012, and Dr. Kile recommended a lumbar-spine MRI. Mr. Ayers then filed an AR-C with the Workers' Compensation Commission on November 8, 2012, alleging a compensable back injury occurring on August 8, 2012. An MRI performed on April 10, 2013, showed disc bulges and annular tears at the L4-5 and L5-S1 levels.

In his testimony, Mr. Ayers stated that he had no significant back problems prior to the on-the-job injury, but that he now has back pain that compromises his ability to work. Mr. Ayers stated that he was seeking medical benefits for treatment of his back condition, to include surgery if necessary. He stated that he mistakenly wrote the wrong date on the AR-C form, and that he did not work on August 8, 2012.

Al House was working with Mr. Ayers when Mr. Ayers was allegedly injured on August 10, 2012. Mr. House testified that although he did not actually see Mr. Ayers hurt himself that day, Mr. Ayers told him that he had hurt his back carrying pipe. Another co-worker, Ray Hawkins, testified that Mr. Ayers never told him that he had been injured on the job, but that he had heard about it from other co-workers. However, co-worker Ty Rainer testified that Mr. Ayers had told him on August 6, 2012, that he had hurt his back at home over the weekend.

Elizabeth Foster, deputy clerk for the City of Ashdown, testified that on August 20, 2012, Mr. Ayers informed her that he had been injured on the job while carrying pipe. Ms. Foster told the city clerk, Kirk Mounts, about Mr. Ayers' claim. Mr. Mounts, however, testified that he asked Mr. Ayers if he had been hurt on the job, and Mr. Ayers explicitly told him that he did not have an on-the-job injury.

In this appeal, Mr. Ayers argues that the Commission erred in concluding that he failed to prove a compensable work-related injury. Mr. Ayers contends that his version of how the injury occurred was consistent with Dr. Kile's medical records. He further asserts that testimony of the other witnesses, with the exception of Mr. Rainer, was consistent with his claim that he had injured his back while carrying pipe at work on August 10, 2012. Mr. Ayers argues that the Commission should have credited the testimony showing that he sustained a compensable injury identifiable by time and place, and that this case should be reversed and remanded for an award of appropriate benefits.

We hold that the Commission's decision displays a substantial basis for denying compensability. As the Commission noted in its opinion, there were numerous inconsistencies in the evidence. Although Mr. Ayers testified that his injury occurred on August 10, 2012, both the medical records and his own AR-C form indicated that the injury occurred on August 8, 2012. Moreover, there were no witnesses to the alleged injury other than appellant himself. We have long held that the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Weaver v. Whitaker*

*Furniture Co., Inc.*, 55 Ark. App. 400, 935 S.W.2d 584 (1996). Although there were witnesses who testified that Mr. Ayers had told them about an alleged work-related injury, there were contrary witnesses. Mr. Rainer testified that appellant told him he had injured his back over the weekend at home. Appellant incorrectly argues that Mr. Rainer was the only witness to discredit his claim for compensability. Mr. Mounts testified:

I did have a conversation with Bryan Ayers about whether he had an injury. It was a Monday morning, and he was working in the building with us because he was on light duty. I had heard from Elizabeth that she'd heard him say that he had hurt it on the job. When I heard that I went straight to Bryan and said, "Bryan, if it did, you need to go to the doctor right now to have it checked." Then Bryan said it wasn't. I told him if it's not then workers' comp wouldn't cover it and then we left it at that.

On this record there was substantial evidence to support the Commission's conclusion that Mr. Ayers failed to meet his burden of proving a back injury, caused by a specific incident, arising out of his employment. Therefore, we affirm the Commission's decision.

Affirmed.

GLADWIN, C.J., and GLOVER, J., agree.

*Moore, Giles & Matteson, LLP*, by: *Greg Giles*, for appellant.

*J. Chris Bradley*, for appellees.