Cite as 2015 Ark. App. 271

# ARKANSAS COURT OF APPEALS

DIVISION I
**No.** CV-14-1133

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| CENTRIA, INC., TRUMBALL INSURANCE COMPANY, and GALLAGHER-BASSETT<br>APPELLANTS<br><br>V.<br><br>STEVE BAILEY<br>APPELLEE | **Opinion Delivered:** April 22, 2015<br><br>APPEAL FROM THE ARKANSAS WORKERS' COMPENSATION COMMISSION<br>[NO. G200181]<br><br>AFFIRMED |

**WAYMOND M. BROWN, Judge**

Appellants appeal from the Arkansas Workers' Compensation Commission's (Commission) November 14, 2014 order adopting the August 19, 2014 opinion of the administrative law judge (ALJ) finding that appellee had proven by a preponderance of the evidence that (1) the medical treatment provided by Baptist Health Medical Center (BHMC) from June 30, 2012, until July 5, 2012,[1] was reasonable and necessary medical treatment related to a work-related injury on December 8, 2011; and (2) appellee was entitled to payment of unpaid medical expenses incurred at BHMC from June 30, 2012, until July 5, 2012. Appellants' sole argument on appeal is that substantial evidence does not support the Commission's conclusion that appellee's June 30, 2012, through July 5, 2012 hospitalization for shortness of breath and chest pain was reasonably necessary in

[1] The ALJs opinion states that appellant was discharged on July 9, 2012, and then refers to his hospitalization period as being from June 30, 2012, through July 6, 2012. His discharge summary states that he was discharged on July 5, 2012, however, his radiological examination states that he was discharged on and on July 6, 2012; accordingly, we refer to his discharge date as date listed in the discharge summary of July 5, 2012.

connection with his admittedly compensable right-ankle injury suffered seven months earlier. We affirm.

The appellant is fifty-three years of age. He graduated high school in 1979. In 2001, appellee began working for appellant Centria, Inc. (Centria), a sheet metal business, as a general laborer. He initially worked in the wood-working shop and then moved into the plant. He helped pack out and assemble sheet metal to be shipped to customers. On December 8, 2011, he sustained an ankle injury when a bundle of sheet metal weighing approximately twelve hundred pounds fell off a transfer cart and pinned his ankle underneath the bundle. He was taken from the plant in Sheridan to BHMC in Little Rock, Arkansas, by ambulance and underwent surgery performed by Dr. Larry Nguyen on December 9, 2011. Appellee's ankle had been broken in four places. He was released from the hospital after one week but returned to BHMC on February 27, 2012, with complaints of swelling in his right lower extremity, pain, and fever. He was referred to an infectious disease specialist and treated with antibiotics. Following additional visits to BHMC for the same symptoms, appellee underwent surgery on April 16, 2012, to have the right-ankle hardware removed due to recurrent cellulitis infection. He was referred to physical therapy. He returned for follow-up visits on May 30, 2012, and June 6, 2012. During this time period, appellee was working part-time for appellant Centria and was paid partial benefits.

Appellee sought treatment in BHMC's emergency room on June 30, 2012, with complaints of shortness of breath, dyspnea, and history of osteomyelitis of the right ankle. He also reported that his hands and legs were swelling. Medical notes reflect that appellee

had a PICC line placed on the left side about three days prior to his June 30, 2012 emergency room visit, after which he started having chest tightness and some shortness of breath. Diagnostic tests consisting of a CT chest angiogram, ECG, and chest x-ray revealed no significant findings. He was discharged on July 5, 2012. He returned to the emergency room on July 14, 2012, with complaints of itching and a rash that was diagnosed as an allergic reaction to Cefazolin.

During an October 3, 2012 follow-up evaluation, Dr. Nguyen determined that appellee had reached maximum medical improvement as of October 8, 2012, and released appellee to return to work with a 21% permanent impairment rating to the right foot. Dr. Nguyen authorized appellee's return to him for checkups on either an annual or as needed basis.

Appellants refused to pay for the additional medical treatment incurred from June 30, 2012, to July 9, 2012, asserting that the request for additional medical treatment was not related to the compensable injury. At the May 21, 2014 hearing before the ALJ, only appellee testified. While acknowledging that he was taking medication for hypertension, of which he had a history, he asserted that he had never had any symptoms of chest pain prior to the June incident and had not had any since the incident. He also stated that BHMC had turned the unpaid bills from his June 30, 2012, to July 6, 2012 admission over to a collection agency and that he was having his paycheck garnished in the amount of $200 every two weeks.[2]

[2] Appellee still works for appellant Centria.

The ALJ filed an opinion on August 19, 2014, finding that appellee had proven by a preponderance of the evidence that (1) the medical treatment provided by the BHMC from June 30, 2012, until July 5, 2012, was reasonable and necessary medical treatment related to a work-related injury on December 8, 2011, and (2) appellee was entitled to payment of unpaid medical expenses incurred at BHMC from June 30, 2012, until July 5, 2012.[3] Appellants filed their notice of appeal to the Full Commission on August 25, 2014.

The Commission entered its order on November 14, 2014, wherein it found that the ALJ's decision was supported by a preponderance of the credible evidence. Accordingly, the Commission affirmed and adopted the ALJ's August 19, 2014 decision, including all findings of fact and conclusions of law therein, as the decision of the Full Commission.[4] This timely appeal followed.

Typically, on appeal to this court, we review only the decision of the Commission, not that of the ALJ.[5] In this case, the Commission affirmed and adopted the ALJ's opinion as its own, which it is permitted to do under Arkansas law.[6] Moreover, in so doing, the Commission makes the ALJ's findings and conclusions the findings and conclusions of the

[3] All other issues were reserved.

[4] One commissioner dissented from the majority opinion.

[5] *Smith v. Commercial Metals Co.*, 2011 Ark. App. 218, at 8, 382 S.W.3d 764, 768 (citing *Daniels v. Affiliated Foods Sw.*, 70 Ark. App. 319, 17 S.W.3d 817 (2000)).

[6] *Id.* (citing *Death & Permanent Total Disability Trust Fund v. Branum*, 82 Ark. App. 338, 107 S.W.3d 876 (2003)).

Commission.[7] Therefore, for purposes of our review, we consider both the ALJ's order and the Commission's majority order.

In reviewing a decision of the Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings and affirm those findings if they are supported by substantial evidence, which is evidence a reasonable person might accept as adequate to support a conclusion.[8] The findings of the Commission will be upheld unless there is no substantial evidence to support them.[9] Substantial evidence exists only if reasonable minds could have reached the same conclusion without resort to speculation or conjecture.[10] Conjecture and speculation, even if plausible, cannot take the place of proof.[11] Although the appellate court defers to the Commission on issues involving the weight of the evidence and the credibility of the witnesses, it may not disregard testimony and is not so insulated as to render appellate review meaningless.[12]

Appellants' argument is essentially that substantial evidence did not support the Commission's decision to award additional medical treatment. We disagree. The law

[7] *Id.*, 2011 Ark. App. 218, at 9, 382 S.W.3d at 769 (citing *ITT/Higbie Mfg. v. Gilliam*, 34 Ark. App. 154, 807 S.W.2d 44 (1991)).

[8] *Serrano v. Westrim, Inc.*, 2011 Ark. App. 771, at 7, 387 S.W.3d 292, 297 (citing *Johnson v. Superior Indus.*, 2009 Ark. App. 483).

[9] *Id.*

[10] *Id.*

[11] *Id.*

[12] *Id.*

requires an employer to provide medical services that are reasonably necessary in connection with the compensable injury received by an employee.[13] The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary.[14] What constitutes reasonably necessary medical treatment is a question of fact for the Commission.[15]

When the primary injury arises out of and in the course of the employment, the employer is responsible for any natural consequence that flows from that injury.[16] The basic test is whether a causal connection exists between the two episodes.[17] When the Commission awards a claimant benefits, we will affirm the decision unless fair-minded persons, presented with the same facts, could not have arrived at the Commission's conclusion.[18]

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[13] *Best Western Inn and Union Ins. of Providence v. Paul*, 2014 Ark. App. 520, at 5, 443 S.W.3d 551, 554 (citing Ark. Code Ann. § 11-9-508(a) (Repl. 2012)).

[14] *Id.*, 2014 Ark. App. 520, at 5–6, 443 S.W.3d at 554 (citing *Stone v. Dollar Gen. Stores*, 91 Ark. App. 260, 266, 209 S.W.3d 445, 449 (2005)).

[15] *Id.*, 2014 Ark. App. 520, at 6, 443 S.W.3d at 554 (citing *Nabholz Constr. Co. v. Gates*, 2010 Ark. App. 182).

[16] *Butler v. Lake Hamilton School Dist.*, 2013 Ark. App. 703, at 7–8, 430 S.W.3d 831, 835 (citing *Jeter v. B.R. McGinty Mech.*, 62 Ark. App. 53, 58, 968 S.W.2d 645, 649 (1998)).

[17] *Id.*, 2013 Ark. App. 703, at 8, 430 S.W.3d at 835.

[18] *Id.*, 2013 Ark. App. 703, at 8, 430 S.W.3d at 835–36 (citing *Olsten Kimberly Quality Care v. Pettey*, 328 Ark. 381, 385, 944 S.W.2d 524, 526 (1997)).

Because an employer takes an employee as he finds him, employment circumstances that aggravate preexisting conditions are compensable.[19] Thus, an aggravation of a preexisting non-compensable condition by a compensable injury itself is compensable; however, the aggravation, being a new injury with an independent cause, must meet all of the requirements for a compensable injury.[20] A compensable injury must be established by medical evidence supported by objective findings.[21] "Objective findings" are those findings that cannot come under the voluntary control of the patient; thus, complaints of pain or tenderness do not constitute objective findings.[22]

In finding that appellants were responsible for the medical treatment incurred by appellee from June 30, 2012, to July 5, 2012, the ALJ noted that the records reflected that appellee "had a PICC line placed in the end of June 2012 to begin a six week intravenous feed of Nafcillin as directed by Dr. Hammack, his infectious disease specialist, due to *on-going* problems with his right ankle. *Within three days*, [appellee] developed shortness of breath, swelling in his hands, and chest pains."[23] The ALJ went on to note that appellee sought treatment at BHMC's emergency room on June 30, 2012, where he was admitted for cardiac evaluation and diagnostic testing, and that Dr. Nguyen recommended that his

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[19] *Ozark Natural Food v. Pierson*, 2012 Ark. App. 133, at 9, 389 S.W.3d 105, 110 (citing *Grothaus v. Vista Health, LLC*, 2011 Ark. App. 130, 382 S.W.3d 1).

[20] *Id*.

[21] *Id*. (citing Ark. Code Ann. § 11-9-102(4)(D) (Supp. 2009)).

[22] *Id*. (citing Ark. Code Ann. § 11-9-102(16)).

[23] (Emphasis added).

IV antibiotics be stopped immediately. Testing revealed no significant cardiac problems, and appellee was discharged on July 5, 2012. The ALJ further noted that prior to appellee's discharge, Dr. Hammack recommended continuation of the plan of intravenous antibiotics on July 2, 2012, and that appellee returned to BHMC on July 14, 2012, with complaints of itching and a rash that was diagnosed as an allergic reaction to Cefazolin.

Appellants point to Dr. Nguyen's July 2, 2012 progress note regarding appellee's shortness of breath and swelling, stating that "This does not at all sound like a reaction to Nafcillin to me." They assert that this proves that his chest pain and shortness of breath incident was not related to his compensable right-ankle injury. However, this argument ignores the fact that the ALJ found credible appellee's testimony that he had had no chest pain prior to or after the incident that caused his June 30, 2012, through July 5, 2012 admission. It also ignores the fact that appellee was on antibiotics via the PICC line due to the infection he had had, which required the removal of the hardware from his right ankle. [24]

Appellee's testimony is supported by the record. Objective medical evidence is necessary to establish the existence and extent of an injury but is not essential to establish the causal relationship between the injury and a work-related accident in a workers'

[24] The July 6, 2012 discharge summary states that "The plan is to discharge the patient home today and continue IV antibiotics at home per the infectious disease doctor, Dr. Hammack."

compensation case.[25] The determination of whether the causal connection exists is a question of fact for the Commission to determine.[26] The ALJ made the following finding:

> In light of the fact that the claimant's symptoms of chest pain and shortness of breath began within a few days of the placement of the PICC line, the symptoms resolved quickly after the antibiotic treatment was stopped during his hospital evaluation, and the subsequent allergic reaction to a difference [sic] antibiotic, it is reasonable to conclude that the claimant's need for treatment and evaluation was related to his work injury of December 8, 2011.

We cannot find that the ALJ's decision, as adopted by the Commission, that appellee's June 30, 2012, through July 5, 2012 hospitalization for shortness of breath and chest pain was reasonably necessary in connection with his admittedly compensable right ankle injury suffered seven months earlier was not supported by substantial evidence. Accordingly, we affirm.

Affirmed.

VAUGHT and HOOFMAN, JJ., agree.

*Anderson, Murphy & Hopkins, L.L.P.*, by: *Randy P. Murphy* and *Mark D. Wankum*, for appellants.

No response.

[25] *Walker v. United Cerebral Palsy of Ark.*, 2013 Ark. App. 153, at 5, 426 S.W.3d 539, 542 (citing *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999)).

[26] *Clement v. Johnson's Warehouse Showroom, Inc.*, 2012 Ark. App. 17, at 3, 388 S.W.3d 469, 472 (citing *Carter v. Flintrol*, Inc., 19 Ark. App. 317, 720 S.W.2d 337 (1986)).