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ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-17-374

ARKANSAS DEPARTMENT OF
COMMUNITY CORRECTION AND
PUBLIC EMPLOYEE CLAIMS
DIVISION

APPELLANTS

V.

KATHY MOORE

APPELLEE

Opinion Delivered January 31, 2018

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. G502001]

AFFIRMED

BRANDON J. HARRISON, Judge

The Arkansas Department of Community Correction (DCC) appeals the decision of the Arkansas Workers' Compensation Commission (the Commission) that reversed the administrative law judge (ALJ) and found that Kathy Moore had proved that she was entitled to additional medical treatment and temporary total-disability (TTD) benefits. DCC argues that the Commission's decision is not supported by substantial evidence. We affirm.

On 4 March 2015, Moore sustained an admittedly compensable injury to her back, right shoulder, and neck after falling off a concrete step. DCC paid some medical benefits and TTD benefits until 18 June 2015. Moore sought additional medical treatment in the form of neck surgery and additional TTD benefits; however, DCC contended that Moore's compensable injury had received all appropriate treatment and that the neck surgery was to

treat a preexisting degenerative condition. An ALJ conducted a hearing to determine Moore's entitlement to additional medical expenses and TTD benefits.

The testimony at the hearing revealed the following. Moore was forty-nine years old and has a master's degree in addiction studies. After her fall on 4 March 2015, she saw Dr. Alexander at Healthcare Plus, where she had x-rays taken and was given medication. She was also referred to and received physical therapy. Dr. Alexander referred her to Dr. Adametz, a neurosurgeon in Little Rock, who ultimately recommended that she have surgery on her neck. The workers'-compensation provider requested a medical evaluation with a different doctor and sent her to Dr. Cathey, who agreed that Moore was a candidate for the surgery but opined that "the indication for the surgery is in no way related to the occupational injury of March 4, 2015." In Dr. Cathey's opinion, Moore suffered a concussion and a musculoskeletal strain as a result of the March 4 injury, and the degenerative disc disease and spondylosis reflected on her MRI scan "were clearly preexisting at the time of the study on May 1, 2015." Dr. Cathey declared Moore was at maximum medical improvement, and further workers'-compensation benefits were denied. Moore used her health insurance to see another doctor, Dr. Rubin, who performed the neck surgery in March 2016.

According to Moore, she was in pain every day before the surgery, including pain in her neck, down her neck to her shoulders, pain in her lower back, nerve damage in her right arm, and numbness in her hands and feet. She denied having any of these problems before the fall, and she said that the surgery relieved a great deal of the pain. She later admitted that she had hurt her ankle before on the job and that she had previously had back

problems. Moore also did not dispute that, as a diabetic, she had previously complained of headaches and numbness in her fingers.

Medical documentation entered into evidence included Dr. Cathey's written opinion, as explained above, as well as Dr. Adametz's deposition testimony taken 19 April 2016. In his deposition testimony, Dr. Adametz explained that Moore's May 1 MRI showed cervical spondylosis, which he believed "could easily be traumatic as opposed to just degenerative," and "because they came on shortly after this fall, she related it all to it, I assumed they were from it." Dr. Adametz considered the MRI scan to be an objective finding and opined that any degenerative damage "appeared to at least have been exacerbated, if not caused by the injury." Also included was Dr. Rubin's written opinion, in which he opined that Moore had

degenerative changes with cervical stenosis on her MRI that were pre-existing her fall. However, she became symptomatic after her fall and she may have aggravated a pre-existing condition at the time of the fall. Considering the degree of cervical stenosis and that her symptoms may represent early myelopathy, I agree with Dr. Adametz's recommendation [for surgery].

In an opinion filed 18 August 2016, the ALJ stated that the issue was "the compensability (causal connection) of the claimant's injury and present condition." The ALJ found that

the claimant's neck injury encompasses a larger area (3-4 disc level) than would be expected from this trauma. The radiologist refers to her condition as spondylotic disc protrusions, suggesting a chronic rather than acute condition. And finally, the claimant's history of injury and symptomology have changed over time. I find the claimant has not met her burden of proof.

The ALJ also found that “claimant has failed to prove by a preponderance of the credible evidence that she sustained a compensable injury.” So Moore’s claim for further medical treatment and TTD benefits was denied and dismissed.

Moore appealed to the full Commission, and in a 2-1 decision, the Commission reversed the ALJ’s opinion and ruled that Moore had proved entitlement to additional medical treatment and TTD benefits. In its findings, the Commission first noted that

an administrative law judge found that the claimant “injured her back, right shoulder and neck” on March 4, 2015. The administrative law judge also found, however, that the claimant “failed to prove by a preponderance of the credible evidence that she sustained a compensable injury.” These findings are incongruous and are not supported by the record or the pleadings.

The Commission noted that the parties had stipulated that the claimant had sustained compensable injuries to her back, right shoulder, and neck, and that “a claimant who has sustained a compensable injury is not required to offer ‘objective medical evidence’ to prove that she is entitled to additional benefits.” (citing *Chamber Door Indus., Inc. v. Graham*, 59 Ark. App. 224, 956 S.W.2d 196 (1997)). The Commission found that Moore was a credible witness and that “the opinions of Dr. Adametz and Dr. Rubin are supported by the record and are entitled to greater evidentiary weight than the opinion of Dr. Cathey.” The Commission concluded that Moore had proved entitlement to additional medical treatment for her neck and that the surgery was reasonably necessary in connection with her compensable injury. So DCC was held responsible for the surgery and for TTD benefits from 19 June 2015 to a date to be determined. DCC appealed the Commission’s decision.

We review the Commission's decision in the light most favorable to its findings and affirm when the decision is supported by substantial evidence. *Parker v. Atl. Research Corp.*, 87 Ark. App. 145, 189 S.W.3d 449 (2004). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.* 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. *Parker v. Comcast Cable Corp.*, 100 Ark. App. 400, 269 S.W.3d 391 (2007). It is the Commission's duty to make determinations of credibility, to weigh the evidence, and to resolve conflicts in medical testimony and evidence. *Martin Charcoal, Inc. v. Britt*, 102 Ark. App. 252, 284 S.W.3d 91 (2008).

DCC's argument on appeal focuses on inconsistencies in Moore's testimony, contradictions between her testimony and the medical evidence, and that her doctors' opinions are based partly on the history provided by her. It asserts that the ALJ correctly assessed the evidence, that the Commission erred in its assessment of the evidence, and that the Commission's decision is not supported by substantial evidence. Moore, on the other hand, argues that her credible testimony, supported by the medical opinions of Dr. Adametz and Dr. Rubin, provided a reasonable and substantial basis for the Commission's decision.

This court is foreclosed from determining the credibility and weight to be accorded to a witness's testimony. *Texarkana Sch. Dist. v. Conner*, 373 Ark. 372, 284 S.W.3d 57 (2008). The Commission is the ultimate arbiter of weight and credibility; it has the authority to accept or reject medical opinions, and its resolution of conflicting medical evidence has the force and effect of a jury verdict. *Bridgestone/Firestone, Inc. v. Hensley*, 2010 Ark. App.

375. Given our standard of review and the Commission's findings of credibility in this case, we hold that reasonable minds could reach the result found by the Commission. We therefore affirm its decision.

Affirmed.

GRUBER, C.J., and GLOVER, J., agree.

Robert H. Montgomery, for appellants.

McKinnon Law Firm, by: *David L. Schneider*, for appellee.