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ARKANSAS COURT OF APPEALS

DIVISION IV

No. CV-22-468

Opinion Delivered March 8, 2023

CHI ST. VINCENT INFIRMARY
MEDICAL CENTER

APPELLANT

V.

HOLLY MCCAULEY

APPELLEE

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. H004765]

AFFIRMED

BRANDON J. HARRISON, Chief Judge

CHI St. Vincent Infirmary Medical Center (St. Vincent) appeals the decision of the Arkansas Workers' Compensation Commission (the Commission) that reversed the opinion of the administrative law judge (ALJ) and found that Holly McCauley had proved that she was performing employment services at the time she sustained a compensable injury to her left hip. St. Vincent contends that the Commission's decision is not supported by substantial evidence. *We affirm.*

McCauley alleged that she injured her left hip and lower back when she tripped on a sidewalk at work; St. Vincent did not accept her injury as compensable, primarily because it claimed she was not performing employment services at the time of the alleged injury. The ALJ conducted a hearing on 14 September 2021 and heard the following testimony.

McCauley, a registered nurse, testified that she began working for St. Vincent on 1 June 2020 in a supervisory position for nurses. She handled scheduling, payroll, and

credentialing, among other things. Her office was on the third floor on the west end of the building, and she parked in an employee parking lot on the east side of the building. Her office was not equipped with basic office supplies, but she had the option of ordering supplies through the department secretary. However, because it was unclear when she would receive those supplies, she decided to purchase her own supplies and bring them to the office. She transported these items from her car to her office using a rolling suitcase.

On 9 June 2020, McCauley had finished the assignments she had been given that morning “by lunchtime,” so she “took that opportunity” to go out to her car and retrieve some items. Although McCauley said that she “thought [she] was taking a lunch break,” she also agreed that as a salaried employee and a registered nurse, she was required to assist if a medical emergency occurred. She agreed that even if on a lunch break, she was “still technically at work.” She described her alleged injury as follows:

[S]o I head out the main entrance. Um, the parking lot is kinda to your left when you come out the main entrance. It’s a downhill sidewalk that stretches the extent of the building at the hospital. Um, it’s sidewalk all the way down to the parking lot and, um, at some point towards the end of the downhill area, um, I stepped with my right foot and I thought I had [a] solid landing because, like, my toe and my heel, you know, grasped something. When I picked up my left foot to make my next step, my right ankle rolled, because there was a section of the sidewalk that was, like, sunk in, you know, significantly lower and it was—I had managed to—to straddle that sunken-in spot, that inset spot. Um, so when that right ankle rolled, my left leg, you know, kinda jumped in to catch me and I went into kinda a half splits thing. Um, my left knee took the impact into that left hip. Um, I basically had, like, my suitcase up here [indicating] holdin’ myself up as much as I could, um, to get myself back up.

McCauley got up, proceeded to her car, loaded items into her rolling suitcase, and sat for several minutes on her heated seats. She then returned to her office with office supplies and

items for her private bathroom. She said part of her job entailed staying overnight if the hospital was short-staffed.

McCauley did not report the injury to her supervisor, Phyllis Phelps, because she “didn’t see Phyllis the rest of the day.” She did recall speaking to an education nurse about it, but she could not recall the nurse’s name. By that weekend, her right ankle was feeling better, but her left hip was getting worse. On June 16, McCauley told Phelps about her injury and indicated she wanted to see a doctor; Phelps told McCauley that she was in a probationary period and would have to take care of it outside business hours.¹

On Saturday, June 20, McCauley went to the emergency room at UAMS and complained of pain, numbness, and tingling in her left hip and leg. On Monday, June 22, she informed Phelps that she had sought medical treatment and had an appointment with a nurse practitioner after work that day. The nurse practitioner gave her lidocaine injections in her left hip. On June 24, McCauley presented at OrthoArkansas with “miserable pain” and numbness down her left leg. An MRI revealed a stress fracture in the neck of her left femur. That same day, McCauley informed Phelps of her diagnosis, and Phelps showed her how to file a workers’ compensation claim on the employee website.

McCauley underwent surgery on her left hip on June 26 and was cleared for light-duty work on July 14. She returned to work but struggled with all the walking required to get into the building from the parking lot and to get to her office. She experienced lower back pain and attempted to start physical therapy, but her workers’ compensation claim had

¹McCauley later testified that she reported her injury to Phelps on June 10.

been denied, and she was terminated from St. Vincent on 19 August 2020 due to “unexcused medical.”

McCauley’s prior medical history included a lumbar laminectomy at disc L5-S1 in 2013 and treatment for piriformis syndrome in late 2019 and early 2020. She had also been treated for fibromyalgia for years and began seeing a pain management doctor in September 2019. McCauley underwent an MRI of her lumbar spine and pelvis in January 2020 as part of her treatment to diagnose piriformis syndrome. The January 2020 MRI revealed no “red flags” and did not result in a recommendation for surgery; an August 2020 MRI, in contrast, showed a persistent posterior disc bulge at disc L5-S1, and her doctor recommended a spinal fusion, which was performed in October 2020.

On cross-examination, McCauley confirmed that she was “on a break” when the injury happened and was not performing her “normal job duties,” although she admitted that she did not know what her “normal job duties were at that point.” She also confirmed that on June 24, she wrote a statement for the insurance company and identified the date of injury as June 10.

Phelps testified that St. Vincent typically assists new employees in getting the office supplies they need. The hospital has supplies and often places orders for supplies. Phelps told McCauley to speak to the department administrative assistant about ordering supplies. Phelps also explained that employees can take a break at any time and that while on a lunch break, employees may go anywhere they choose, including off hospital grounds. Nurse administrators such as McCauley are not “typically on call,” but they do communicate with staff by cell phone if needed. Spending the night at the office “would not be an expectation

of [McCauley's] position.” In addition, as a registered nurse in a salaried position, McCauley could work extra shifts providing direct patient care, but only if she chose to.

Phelps did not recall precisely when she was notified of McCauley's injury, only that it was days after the alleged incident, but she (Phelps) encouraged McCauley to file an incident report. Phelps agreed that an employee on a lunch break was still “technically on duty.” She also agreed that while on duty during a work shift, an employee can do things that do not benefit his or her employer, such as leave the hospital campus to get lunch. It was possible that McCauley might receive a phone call while on her lunch break, but it was “very unusual for an employee in Holly's position, or my position, to be out at lunch and be called back for some type of emergency.”

In an order issued on 6 December 2021, the ALJ found that McCauley had failed to demonstrate by a preponderance of the credible evidence that she was engaged in employment services at the time of the alleged incident. In making this determination, the ALJ made detailed findings as to McCauley's credibility:

Based on the claimant's rather meandering, often conflicting and contradictory, self-serving, uncorroborated testimony, as well as the lack of other credible evidence supporting her claim, I find the claimant's testimony to be incredible. In carefully observing all aspects of her demeanor—especially her somewhat rambling, careful, and stilted manner of speaking as she testified on direct/re-direct/rebuttal, and cross and re-cross-examination—I was left with the distinct impression she was obviously a person of above-average intelligence and a number of preexisting and symptomatic physical problems who clearly had a basic understanding of the applicable law—and who was going out of her way, stretching her testimony's credulity the more she was questioned, to make the facts of her case fit within the law's definition of “employment services.”

Conversely, the ALJ found Phelps “highly credible.”

After considering the testimony and the documentary evidence presented at the hearing, the ALJ found,

The claimant herein is employed in the St. Vincent HR division, and her job duties do not involve direct patient care, but rather are administrative in nature, consisting of job duties such as orientation, training, and payroll. The claimant also admitted there was no emergency the day of the alleged fall. Significantly, she admitted her *sole purpose* for being on the sidewalk *outside the hospital at the time of her alleged fall as she was walking away from the hospital to her car pulling her personal rolling suitcase to her car* was to retrieve personal items from her car to put in her office. Undoubtedly, these admissions and her other testimony in this regard make it abundantly clear the claimant alleges she was on her lunch break, walking away from the hospital pulling her own empty personal suitcase to retrieve non-essential, nonwork-related personal items from her car to bring into her office—not for the benefit of her employer, *but for her own sole benefit and convenience.*

(Citations omitted; emphasis in original.) The ALJ also noted that while McCauley worked at a hospital, she did not seek medical treatment until Saturday, June 20, eleven days after the alleged incident. When she did seek treatment, she did not mention that the incident happened at her job at St. Vincent. The ALJ concluded that McCauley had not been acting within the course and scope of her employment at the time of the incident and that the activity in which she was engaged in no way conveyed either a direct or indirect benefit to her employer. Consequently, the ALJ also concluded that McCauley had failed to meet her burden of proof in showing a compensable injury to either her left hip or her lumbar spine.

McCauley appealed to the Full Commission, and on 27 April 2022, the Commission, with one Commissioner dissenting, issued an opinion reversing the ALJ's opinion. The Commission found that McCauley was a credible witness and that she had proved she was performing employment services at the time of her accidental injury. The Commission credited McCauley's testimony that as she "walked to her vehicle in order to retrieve

additional work-related office supplies, she tripped and fell.” The Commission found that she was “performing duties which at least indirectly benefitted the employer.” The Commission also noted Phelps’s testimony that McCauley was still “technically on duty.”

In addition to the employment-services finding, the Commission found that McCauley had proved that she sustained a compensable injury to her left hip and that the treatment for her lower back was a “natural consequence and was causally related to the compensable injury.”

St. Vincent has timely appealed the Commission’s decision to this court.

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.* 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). We will reverse the Commission’s decision if we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions of the Commission. *Pulaski Cnty. Special Sch. Dist. v. Stewart*, 2010 Ark. App. 487, 375 S.W.3d 758.

I. *Credibility*

St. Vincent first argues that the Commission erred in finding McCauley credible. It acknowledges that questions of weight and credibility are within the sole province of the Commission but asserts that in this case, there is a “glaring lack of justification” for the

Commission's finding. In most cases, including this one, the ALJ is the only Commission representative who witnesses a party's testimony, demeanor, body language, and facial expressions. In this case, the ALJ carefully observed McCauley's demeanor, "especially her somewhat rambling, careful, and stilted manner of speaking," and found that she lacked credibility. In addition, McCauley made several statements that were contradicted or refuted by her previous testimony, Phelps's testimony, and the medical evidence. St. Vincent contends that because this case primarily relies on McCauley's testimony, the ALJ's thoughtful assessment of her credibility should not be disregarded without explanation. St. Vincent asserts that the Commission's finding on McCauley's credibility is not based on substantial evidence and should be reversed.

Our case law holds that the findings of the ALJ on the issue of credibility are not binding on the Commission. *Roberts v. Leo Levi Hosp.*, 8 Ark. App. 184, 649 S.W.2d 402 (1983). Further, once the Commission has made its decision on issues of credibility, the appellate court is bound by that decision. *Willis v. Ark. Dep't of Corr.*, 2021 Ark. App. 50, 616 S.W.3d 679. Thus, we have no authority to reverse the Commission's credibility finding in this case.

II. *Performing Employment Services*

A compensable injury does not include an injury that was inflicted on the employee at a time when employment services were not being performed. Ark. Code Ann. § 11-9-102(4)(B)(iii) (Supp. 2021). We use the same test to determine whether an employee was performing "employment services" as we do when determining whether an employee was acting within "the course of employment." *Trezza v. USA Truck Inc.*, 2014 Ark. App. 555,

at 3, 445 S.W.3d 521, 523. The test is whether the injury occurred within the time and space boundaries of the employment when the employee was carrying out the employer's purpose or advancing the employer's interest directly or indirectly. *Id.*

In making its decision, the Commission relied, in part, on case law stating that an injury suffered by an employee while on break is compensable if the employer has imposed some duty or requirement on the employee to be fulfilled during a break. *Moncus v. Billingsley Logging*, 366 Ark. 383, 235 S.W.3d 877 (2006); *see also Ray v. Univ. of Ark.*, 66 Ark. App. 177, 990 S.W.2d 558 (1999) (holding that when an employer requires an employee to be available for work duties, even when that employee is on break, the employee is performing employment services). The Commission noted that at the time of the injury, McCauley was obtaining items for use in her office, which at least indirectly benefited her employer. Also, Phelps had agreed that McCauley was still "technically on duty" and subject to being called to return to work even during her lunch break.

St. Vincent contends that McCauley admitted she did not know what her job duties were on the day of the alleged injury and that only her own self-serving testimony established whether she knew she could be called back to work during her lunch break, what items she retrieved from her car that day, and whether she had a cell phone or other means of communication with her at the time of the alleged fall. Phelps did testify that it was possible for McCauley to be called back to work during her lunch break but stated that it would be "very unusual." St. Vincent argues that almost any employee could potentially be called back from a break, especially given modern technology, but this does not mean that every employee is performing employment services while on a break. It insists that

there must be a specific duty that the employee is required to perform while on that break. In this case, McCauley could not articulate a specific duty or realistic situation in which she would be recalled from a break; she only testified that it was possible.

The Commission credited McCauley's testimony that she was walking to her vehicle to retrieve items for her work office and found that this indirectly benefited her employer. The Commission also credited Phelps's testimony that McCauley was still "technically on duty" and subject to being called back to work during her lunch break. We hold that reasonable minds could reach the result found by the Commission, so its decision is supported by substantial evidence.

III. *Compensable Consequence*

If an injury is compensable, then every natural consequence of that injury is also compensable. *Hubley v. Best W.-Governor's Inn*, 52 Ark. App. 226, 916 S.W.2d 143 (1996). In other words, where the second complication is found to be a natural and probable result of the first injury, the employer remains liable. *Bearden Lumber Co. v. Bond*, 7 Ark. App. 65, 644 S.W.2d 321 (1983). The basic test is whether there is a causal connection between the two episodes. *Id.*

St. Vincent first argues that this issue was not raised below and that the Commission improperly applied this doctrine sua sponte. McCauley asserted that she had sustained compensable injuries to her left hip and lower back; she did not argue that her left-hip injury led to her lower-back injury. Nevertheless, the Commission found that the treatment provided for McCauley's back was a "natural consequence" of her fractured hip. St. Vincent contends that it was "error for the Commission to base its decision on a finding of fact

which was clearly not in issue or developed by the evidence without notice to the parties of its intent to do so and where no opportunity to offer proof on that issue was afforded.” However, this court has held that Arkansas Workers’ Compensation Commission Rule 25, which defines the scope of review from the ALJ to the Commission, does not preclude the Commission from reviewing issues not appealed from or not raised at the ALJ level if it so chooses. *See Pharmerica v. Seratt*, 103 Ark. App. 9, 285 S.W.3d 699 (2008) (explaining that the Commission has the authority, and the duty, to render anew findings relevant to the claim before it).

Second, St. Vincent argues that that even if McCauley did sustain a compensable injury to her left hip, her lumbar condition was not a compensable consequence because it was preexisting, and there is no evidence that it was worsened or changed by the alleged fall or resulting condition. The medical records show that she had suffered from low back pain for at least a decade by the time of the hearing, evidenced by the prior surgery at disc L5-S1 in 2013. In January 2020, approximately five months before the alleged work injury, her doctors ordered an MRI of her low back, and the stated history on the MRI report was “Low back pain, History of arthrodesis.” On 16 April 2020, McCauley presented to Dr. Alyson Fish for “chronic back pain that has worsened.” Also in April 2020, McCauley was treated for a burn and infection to her gluteal region, which she reported was the result of a heating pad. According to St. Vincent, this indicates that she was chronically using a heating pad to treat low-back, coccyx, or perhaps hip pain prior to the alleged work injury.

St. Vincent also notes that McCauley did not even claim that a back injury occurred on 9 June 2020; she testified that when she fell, she injured her right ankle and left hip. St.

Vincent acknowledges that she testified “vaguely” that her altered gait resulting from her hip pain caused her low-back pain to worsen:

[S]o while I was walking on it while it was still broken . . . I was really just hopping around on one (1) leg. Um, if I wasn't sitting, I was hopping, um, because I couldn't put the pressure on that, um, or limping in a certain way that was causing exaggerated pain in my lower back. . . . [F]rom June to November where I was havin' to overcompensate on my gait and my posture to be able to stay mobile, um, and it was causing a lot of lower back pain that I'd not had before at all.

St. Vincent counters, however, that there is no indication in the record that McCauley's doctors related her back pain or condition to her alleged work injury. It concludes that this portion of the Commission's opinion is not supported by substantial evidence and should be reversed.

McCauley contends that objective findings showed that she injured her left hip and back. The MRI before her accident was normal, an MRI after her fall showed she had a stress fracture, a second MRI showed she had a persistent posterior disc bulge, and she had to have surgery on both her left hip and back. She argues that her previous back injury had healed long before this incident and that she had been able to return to work with no restrictions. She also argues that even if her back injury was preexisting, her inability to not walk normally for months would have aggravated her back, and “when a pre-existing injury is aggravated by a later compensable injury, compensation is in order.” *Wade v. Mr. C. Cavanaugh's*, 298 Ark. 363, 367, 768 S.W.2d 521, 523 (1989).

McCauley, whom the Commission deemed credible, testified that her altered gait had caused exaggerated pain in her lower back. The Commission's opinion cited the doctor's notes from an appointment at OrthoArkansas on 16 July 2020, which noted that

McCauley “continues to have lower back pain. . . . Pain is moderate to severe in intensity and getting worse especially since the recent fall.” The Commission also cited notes dated 19 August 2020 from Dr. Kathryn McCarthy, who would later perform McCauley’s lumbar-fusion surgery in October 2020. Dr. McCarthy observed that McCauley had a “longstanding history of problems with her lower back. Specifically and recently she has developed severe back pain and right leg pain.” Given this evidence, we hold that reasonable minds could reach the conclusion made by the Commission.

Affirmed.

GLADWIN and KLAPPENBACH, JJ., agree.

Michael E. Ryburn, for appellants.

Laura Beth York, for appellee.