

Cite as 2009 Ark. App. 733

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA09-424

DOUGLAS W. KING

APPELLANT

V.

CITY OF LITTLE ROCK

APPELLEE

Opinion Delivered NOVEMBER 4, 2009APPEAL FROM THE WORKERS'
COMPENSATION COMMISSION
[F505201]

AFFIRMED

RITA W. GRUBER, Judge

Douglas W. King, a former patrolman for the Little Rock Police Department, appeals the denial of his workers' compensation claim for additional medical treatment and benefits that he contends were related to a compensable injury sustained on December 1, 2004. On that date he was driving his patrol car, was rear-ended, and struck his head against the plexiglass shield behind his seat.

The City of Little Rock initially paid for some medical benefits but later controverted King's claim. At a hearing before the administrative law judge, King claimed that he had sustained a compensable lumbar injury and was entitled to related medical benefits for his back as well as temporary total disability benefits. The City asserted that King had no compensable injury or that a compensable temporary aggravation of his preexisting degenerative condition had resolved by April 25. The law judge found that King had sustained a temporary aggravation of his preexisting back condition; that the aggravation had resolved by April 25,

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2005; that King failed to prove that “additional medical” was reasonable and necessary and related to the accident; and that he failed to prove that he remained in his healing period from April 25, 2005, until October 16, 2006. In a 2-1 decision, the Workers’ Compensation Commission affirmed and adopted the law judge’s opinion. King now appeals the Commission’s decision, raising one point. We affirm.

King contends that substantial evidence does not support the Commission’s finding that his “compensable back injury” had resolved by April 2005. He presents the following arguments in support of this contention: the injury was a result of the impact on December 1, 2004, in which he hit his head; Dr. Russell Burton, the general practitioner who treated him for nine years beginning in April 2000, opined that King’s back pain resulted from the accident; as shown by Dr. Burton’s additional statement, a February 2005 incident of King’s popping his back and having more pain was simply a result of the initial problem; and the persistent back pain, documented by complaints to medical professionals on twenty-one occasions, was not alleviated until back surgery was performed in September 2006. These arguments, however, go to the weight and credibility of the evidence rather than to its substantialness.

Our standard of review is well settled. Where the sufficiency of the evidence is challenged on appeal, we review the evidence in the light most favorable to the findings of the Commission and affirm if those findings are supported by substantial evidence. *Murphy v. Forsgren, Inc.*, 99 Ark. App. 223, 258 S.W.3d 794 (2007). Substantial evidence is relevant

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evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.* Although the Commission may not arbitrarily disregard medical evidence or the testimony of any witness, *Stone v. Dollar Gen. Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005), we defer to the Commission's findings on what testimony it deems credible, and the resolution of conflicting evidence is a question of fact for the Commission. *Hargis Transp. v. Chesser*, 87 Ark. App. 301, 190 S.W.3d 309 (2004).

In workers' compensation law, an employer takes the employee as he finds him, and employment circumstances that aggravate preexisting conditions are compensable. *Heritage Baptist Temple v. Robison*, 82 Ark. App. 460, 120 S.W.3d 150 (2003). An aggravation of a preexisting noncompensable condition by a compensable injury is, itself, compensable. *Id.* An aggravation is a new injury resulting from an independent incident, and the aggravation must meet the definition of a compensable injury in order to establish compensability. *Id.*

Here, the Commission assigned greater weight to the testimony of Dr. Kent Davidson, a specialist and a treating physician for King,¹ than to the opinion of his family physician, Dr. Burton. The Commission reasoned as follows regarding King's claim that he was entitled to additional medical treatment and remained within his healing period:

Dr. Davidson continued to treat the claimant until April 11, 2005 and did not recommend surgery at that time. Dr. Davidson did review the operative report of [neurosurgeon] Dr. Mason and opined that no acute disc

¹The Commission refers to Dr. Davidson as an orthopedic surgeon and appellee calls him an orthopedic specialist. Dr. Davidson's testimony, however, cited by appellee, states only his credentials as a family physician with training in sports training, musculoskeletal medicine, and a sports medicine fellowship.

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herniation was found and that most of the surgery in September 2007 revolved around degenerative problems. On April 11, 2005, Dr. Davidson opined the claimant could work on modified duty and indicated the claimant continues to have pain with no objective findings. Certainly, an aggravation of a pre-existing, non-compensable condition by a compensable injury is, itself, compensable. [Citations omitted.] After taking into consideration the normal examination, normal bone scan, equivocal MRI and the normal nerve conduction study, Dr. Davidson opined the claimant's condition appeared to be a bad sprain or strain that would resolve on its own. Dr. Davidson diagnosed the claimant with lumbar strain and SI joint dysfunction with inflammation. Dr. Davidson's February 21, 2005, report indicates the SI joint strain was improved with the cortisone injection.

The Commission also noted that no herniated disc from the compensable injury of December 1, 2004, was shown in the medical records; and that by April 11, 2005, King had received medication, physical therapy, cortisone injections, testing, and conservative care.

This evidence constitutes substantial evidence to support the Commission's findings that King sustained a temporary aggravation of his preexisting degenerative disc disease, which had resolved by April 25, 2005. It was up to the Commission to choose between the two doctors' differing testimony as to diagnosis and resolution, and King presents no convincing argument on which to reverse its decision. Thus, the Commission's decision displays a substantial basis for denying King's claim for additional treatment and benefits after April 25, 2005.

Affirmed.

BAKER and BROWN, JJ., agree.