

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA08-838

PAULA ARD

APPELLANT

V.

ST. VINCENT HEALTH SERVICES;
Alternative Insurance Management

APPELLEES

Opinion Delivered APRIL 1, 2009

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F501764]

REVERSED AND REMANDED

JOSEPHINE LINKER HART, Judge

Paula Ard appeals from the Arkansas Workers' Compensation Commission's finding that she failed to prove by a preponderance of the evidence that she suffered a compensable injury supported by objective findings. We hold that the Commission arbitrarily disregarded certain evidence, and therefore, we reverse and remand for further proceedings.

Ard, a registered nurse, provided home health services to patients of her employer, St. Vincent Health Services. She testified that on January 31, 2005, while moving a bed-bound patient, she felt something "pop" in her back. Later that day, she began to suffer from pain in her lower back and down her right leg. She reported the injury to her supervisor.

On February 2, 2005, Ard's employer sent her to a physician, Dr. William Warren. According to medical records, Ard reported pain "located on bilateral lumbar region" that did not "radiate." Medical records show that on February 3, 2005, Ard reported worsening injury status and severe symptoms in the lumbosacral area, and on February 4, 2005, she

reported worsening bilateral pain in the lumbosacral region and the buttocks without radiation. Medical records also show that on February 8, 2005, Ard reported “lower back pain radiating down the posterior of both lower extremities” that was “[t]o the calf on the right and posterior thigh on the left.” In an “Injury Recheck Report” dated February 9, 2005, Dr. Warren noted “pain down rt. leg almost to foot” and lumbar pain.

A February 10, 2005 MRI report on the lumbar spine indicated that Ard had a “large right paracentral disk herniation at L4-5 where there is an inferiorly migrated extruded fragment of nearly 1 cm size, severely impinging the L5 nerve root on the right.” Dr. Warren noted on February 14, 2005, that Ard suffered from “[r]adicular leg pain in the right leg.” Dr. Warren referred Ard to Dr. Steven Cathey.

In a letter written February 24, 2005, Dr. Cathey wrote that Ard was experiencing low back pain with pain that will “occasionally radiate down the posterolateral aspect of her left leg.” He further wrote, “The patient and I reviewed a recent MRI scan of her lumbar spine. She appears to have an acute right paracentral (the asymptomatic side) disc herniation at L4-L5.” He concluded that “since Ms. Ard’s clinical presentation does not correlate with the MRI scan, and since she also has significant risk factors for surgery, I do not believe she is a candidate for lumbar disc surgery or other neurological intervention.”

On March 2, 2005, Dr. Warren wrote that the “pain is located on lumbar region and the left leg.” He released her from care to regular activity. He further advised her to “see PCP regarding a non-work related condition.” Ard’s claim for benefits was denied as of March

2, 2005. She was later treated by other physicians, and surgery was performed on her back. She sought workers' compensation benefits, claiming that she sustained a compensable injury to her back on January 31, 2005.

The Commission found that Ard did not prove that she sustained a compensable injury by medical evidence supported by objective findings. While noting that the MRI showed a large disc herniation at L4-5 on the right, the Commission found that the "evidence before the Commission does not demonstrate that these diagnostic abnormalities were caused by the alleged accidental injury occurring January 31, 2005." The Commission wrote that Dr. Cathey noted an acute disc herniation, but that the "herniation was on the claimant's asymptomatic side." The Commission also observed that "Dr. Cathey did not opine that the claimant had sustained a herniated disc as a result of a work related accident."

On appeal, Ard argues in part that the Commission arbitrarily disregarded lay testimony and medical evidence in support of her claim. She argues further that the Commission disregarded the fact that her disability arose soon after the accident and was logically attributable to it. We hold that the Commission arbitrarily disregarded evidence.

On appeal, we view the evidence in a light most favorable to the Commission's decision and affirm if the decision is supported by substantial evidence. *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001). While it is the Commission that determines the weight of the evidence and the credibility of witnesses, it may not arbitrarily disregard the testimony of any witness or other evidence submitted in support of a claim. *Id.*

A compensable injury must be established by medical evidence supported by “objective findings.” Ark. Code Ann. § 11-9-102(4)(D) (Supp. 2007). “Objective findings” are those that “cannot come under the voluntary control of the patient.” Ark. Code Ann. § 11-9-102(16)(A)(i). A causal relationship between the injury and the work related accident, however, need not be established by objective medical evidence. *Freeman, supra*.

Clearly, a disc herniation is an objective finding, as it is not under the control of the patient. The Commission’s finding that Ard did not prove she sustained a compensable injury by medical evidence supported by objective findings was based in part on Dr. Cathey’s observation that the disc herniation was on the right, which was Ard’s “asymptomatic side.” As previously noted, however, there are several references in the record to right leg pain that predate Dr. Cathey’s letter. The Commission did not consider this evidence. Moreover, the Commission also observed that Dr. Cathey did not opine that Ard had sustained a herniated disc as a result of a work related accident. Dr. Cathey, however, did not opine regarding causation and in fact only opined that Ard was not a surgical candidate. Furthermore, objective medical evidence is not essential to establish a causal relationship, and the Commission did not weigh or consider the credibility of lay witness testimony regarding causation. Thus, we conclude that the Commission arbitrarily ignored evidence. *See Kimbell v. Ass’n of Rehab Industry & Business Companion*, 366 Ark. 297, 235 S.W.3d 499 (2006) (holding that the Commission arbitrarily disregarded witness testimony); *Freeman, supra* (holding that the Commission arbitrarily disregarded medical evidence). We reverse and

remand for further proceedings.

Reversed and remanded.

VAUGHT, C.J., and BROWN, J., agree.