

# ARKANSAS COURT OF APPEALS

DIVISION II

No. CA08-1377

DAROLD BRUTON,

APPELLANT

V.

VAN BUREN PIPE CORPORATION  
and AMERICAN GUARANTEE  
INSURANCE,

APPELLEES

**Opinion Delivered** 22 APRIL 2009

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION,  
[NO. F600340]

AFFIRMED

**D.P. MARSHALL JR., Judge**

In September 2005, Darold Bruton injured his lower back at work while unloading a pipe from a conveyor belt. His employer, Van Buren Pipe Corp., accepted the back injury as compensable and paid for medical treatment. Bruton eventually came under the care of Dr. James Blankenship, who ordered an MRI, a multi-level discogram, facet joint injections, and physical therapy. In August 2006, Dr. Blankenship concluded that no further medical treatment was necessary. A few months later, Bruton received a change of physician to Dr. Cyril Raben. He evaluated Bruton in February 2007 and recommended a second discogram. Van Buren paid for Bruton's initial visit with Dr. Raben but refused to pay for the discogram.

After a hearing, the administrative law judge found that Bruton failed to prove that the discogram recommended by Dr. Raben was reasonably necessary treatment

for Bruton's work injury. The Commission, with one dissenter, affirmed and adopted the ALJ's opinion. Our standard of review requires that we affirm if the Commission's decision displays a substantial basis for denying relief. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 265, 209 S.W.3d 445, 449 (2005). It does.

The Commission faced conflicting doctors' opinions. Dr. Blankenship felt that further medical treatment would not benefit Bruton, while Dr. Raben believed that a second discogram would be beneficial. The Commission considered both opinions and found that "the opinion of Dr. Blankenship is entitled to greater weight than that of Dr. Raben." The Commission gave three reasons for relying on Dr. Blankenship's opinion. First, Dr. Blankenship treated Bruton over a six-month period, while Dr. Raben saw Bruton only once. Second, Dr. Raben was not aware of Bruton's back problems before September 2005. Third, the Commission addressed Dr. Raben's concern that a second discogram was needed because the first one may have been done at the wrong level:

[a]dmittedly, the discogram report by Dr. Blankenship dated March 20, 2006, refers to the L5-S1 level as opposed to L4-5. However, Dr. Blankenship explained this discrepancy in his letter dated June 5, 2007 in which he noted that the confusion was caused by the claimant's anatomy. However, it is clear from a review of Dr. Blankenship's letter that he specifically evaluated the appropriate level during the discogram he performed in March 2006.

Bruton further calls Dr. Blankenship's credibility into question by highlighting other discrepancies in his discogram records. Questions of credibility and evidentiary

weight, however, are for the Commission. *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 279–80, 72 S.W.3d 560, 565 (2002). And after considering the record as a whole, the Commission gave Dr. Blankenship’s opinion greater weight than Dr. Raben’s. Precedent requires that we defer to the Commission’s resolution of these conflicting medical opinions. *Ibid.*

Finally, we reject Bruton’s argument that he needs a second discogram because his condition has worsened over time. MRIs from December 2005 and March 2006, as well as the March 2006 discogram, showed essentially the same injury—a disc protrusion or herniation at the L4-5 level. The Commission was further convinced by videos of Bruton from February 2007, the same month he was evaluated by Dr. Raben. The videos showed Bruton driving his van, filling it with gas, getting a child seat out of the van, squatting on one knee, and bending his back over.

Unpersuaded by Bruton’s arguments that his injury got worse over time and that the first discogram evaluated the wrong level, the Commission found that Bruton failed to prove that he was entitled to a second discogram. This decision rests on a substantial basis. Reasonable people with the same facts before them could have arrived at the Commission’s conclusion about Bruton’s entitlement to additional medical treatment. *Stone*, 91 Ark. App. at 265, 209 S.W.3d at 448. We therefore affirm.

VAUGHT, C.J., and BAKER, J., agree.