

Cite as 2010 Ark. App. 761

ARKANSAS COURT OF APPEALSDIVISION II
No. CA 10-213

TOMMY HOWELL

APPELLANT

V.

AUTOMATED CONVEYOR
SYSTEMS, INC.
TRAVELERS INSURANCE CO.

APPELLEES

Opinion Delivered November 10, 2010APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F702656]

AFFIRMED

RAYMOND R. ABRAMSON, Judge

On December 1, 2006, Tommy Howell suffered an admittedly compensable injury to his left shoulder and right wrist while working for Automated Conveyor Systems, Inc. (ACSI). The injuries occurred when he fell approximately fifteen feet from a ladder while trying to repair a broken gas line on the top of an oven. ACSI provided medical treatment and temporary total disability benefits for the injuries Howell sustained to his left shoulder and right wrist. They also provided a permanent anatomical impairment for those injuries.

On May 10, 2007, while being treated for his shoulder injury, Howell complained to his physical therapist of back pain. This was his first documented complaint of back problems to any health-care provider since his fall in December 2006. A consult summary report with the physical therapist and Dr. Manugian dated May 11, 2010, stated that Howell often commented that he had “difficulty doing some pretty difficult things around his parents farm” and that he

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was cautioned against attempting such tasks. During his May 21, 2007 office visit with Dr. Manugian, Howell related that his back pain started after his fall in December 2006. Dr. Manugian opined that Howell's symptoms could "very easily be an aggravation of underlying pathology" and recommended an MRI of the lumbar spine. The MRI was abnormal. Dr. Manugian initially recommended lumbar epidural blocks to relieve his symptoms but noted that surgical intervention might be necessary.

After the more conservative nerve-block treatments recommended by Dr. Manugian failed to alleviate his symptoms, Howell presented to Dr. Waggoner on September 14, 2007, to discuss surgical intervention. In the history section of the medical report, Dr. Waggoner stated that Howell had "been having trouble with his back for over a year now." The surgery was performed on November 5, 2007.

Howell subsequently filed a workers' compensation claim alleging that he sustained a compensable low-back injury on December 1, 2006, in the same accident in which he injured his shoulder and wrist. ACSI controverted Howell's back-injury claim in its entirety, and a hearing on compensability was held on May 22, 2009.

Howell was the only witness at the hearing. He testified that he suffered back pain after his fall but that he initially attributed the pain to his sleeping position because of his injured shoulder. He did not know if he complained of back pain in the emergency room because his shoulder hurt so badly that he did not really feel pain anywhere else. He stated that he did not know why Dr. Waggoner's September 14, 2007 report indicated that he had had back pain for

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over a year because he had never experienced or ever been treated for any back problems prior to his fall. He stated that he was not concerned about the pain initially but that it continued to get worse over time. He stated the pain in his back eventually got so bad that he was unable to stand for long periods of time or complete his physical therapy. He testified that he was on pain medication for his shoulder until around the first of May and that he began complaining about his back pain around that time.

After hearing Howell's testimony and reviewing the medical records submitted, the administrative law judge (ALJ) found Howell to be an extremely credible witness and that he had sustained his burden of proving that he sustained a compensable back injury. The ALJ then entered an award of additional temporary total disability benefits, payment of all outstanding and future reasonable and necessary medical expenses, and attorney's fees.

ACSI timely appealed the ALJ's ruling to the full Commission. The Commission reversed the decision of the ALJ finding that, because Howell did not complain of back problems until over five months after his accident, despite numerous doctor and physical therapy visits, he had failed to prove that his back injuries were causally connected to his fall on December 1, 2006. The Commission stated that to find otherwise would require resorting to speculation and conjecture.

Howell appeals the Commission's denial of benefits claiming that the Commission (1) arbitrarily disregarded his testimony which the ALJ found to be extremely credible, (2) arbitrarily disregarded the medical evidence that reflected that he had not suffered from any back pain

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prior to his on-the-job accident and that indicated that his back pain surfaced after he began to taper off his pain medication, and (3) failed to make specific findings as to his credibility as a witness or as to the relevant medical records so as to provide a meaningful appellate review.

In appeals involving claims for workers' compensation, we view the evidence in the light most favorable to the Commission's decision and affirm the decision if it is supported by substantial evidence. *Holland Group, Inc. v. Hughes*, 95 Ark. App. 369, 237 S.W.3d 120 (2006). Substantial evidence exists if reasonable minds could reach the Commission's conclusion. *Id.* The Commission may also accept or reject medical opinions and determine their medical soundness and probative force. *Cranford v. Superior Indus.*, 2009 Ark. App. 738, ___S.W.3d ____. The issue is not whether we might have reached a different result from the Commission; if reasonable minds could reach the result found by the Commission, we must affirm the decision. *Atlis In-Home Care, Inc. v. Hackney*, 2010 Ark. App. 630, ___ S.W.3d ____.

In order to prove a compensable injury, a claimant must prove, among other things, a causal relationship between his employment and the injury. *Searcy Indus. Laundry, Inc. v. Ferren*, 82 Ark. App. 69, 110 S.W.3d 306 (2003). The determination of whether a causal connection exists is a question of fact for the Commission to determine. *Jeter v. B.R. McGinty Mech.*, 62 Ark. App. 53, 968 S.W.2d 645 (1998). When making this determination, the claimant does not receive the benefit of the doubt. Ark. Code Ann. § 11-9-704(c)(4) (Repl. 2002); *Clark v. San Antonio Shoes, Inc.*, 2009 Ark. App. 689. A claim for workers' compensation benefits must be based on

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proof. Speculation and conjecture, even if plausible, cannot take the place of proof. *Ark. Dep't of Corr. v. Glover*, 35 Ark. App. 32, 812 S.W.2d 692 (1991).

Howell is correct that there was no medical evidence in the record that he had any previous back problems prior to his December 2006 fall. Despite Howell's claims to the contrary, the Commission specifically addressed that fact. The record is also clear that Howell failed to complain of any back problems for over five months despite more than thirty doctor and physical-therapy visits. While Howell testified that his back pain began after his fall, he asserted that he delayed reporting the pain because it was not significant until he began to taper off the pain medication for his other injuries. However, there was no medical evidence presented that the pain medication Howell was taking for his shoulder and wrist could effectively mask his back pain. In fact, subsequent nerve-block treatments were unsuccessful, and surgery was ultimately required. Additionally, there were notations in the physical therapist's notes that Howell was attempting difficult projects at home and on the farm and was cautioned about performing such tasks. While Howell denied that these activities caused his pain, the evidence presented could just have easily supported an argument that Howell injured his back after the fall performing projects around the house or on the farm or by doing some other activity and that the pain medications he was taking masked that subsequent injury to his back. Therefore, when the evidence is viewed in the light most favorable to the Commission, substantial evidence supports the Commission's decision.

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Based on the foregoing, we hold that the Commission did not arbitrarily disregard evidence but rather deciphered the evidence, finding a causal connection to be lacking. The Commission specifically found the required causal connection lacking because Howell failed to complain of back problems for over five months despite many visits with his physicians and physical therapists. These findings are sufficient to allow us to engage in a meaningful review. Even if the Commission found Howell's testimony to be credible, there is still sufficient evidence to support the Commission's determination that it would have to resort to speculation and conjecture to find that Howell's back injury was causally connected to his December 1, 2006 fall. Thus, there was a substantial basis for the denial of relief, even if we might have decided differently. Accordingly, we affirm.

HENRY and BROWN, JJ., agree.