

Cite as 2009 Ark. App. 129 (unpublished)

## ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA08-591

PATRICIA WHITE

APPELLANT

V.

DOLLAR GENERAL STORES

APPELLEE

**Opinion Delivered** FEBRUARY 25, 2009

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION  
[NO. F504690]

AFFIRMED

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**RITA W. GRUBER, Judge**

Patricia White appeals a January 17, 2008 decision of the Workers' Compensation Commission that denied her claim for compensability of a back injury and reversed an administrative law judge's finding that "she sustained a compensable injury to her low back on April 28, 2005, supported by objective medical findings."<sup>1</sup> White contends that substantial evidence does not support the Commission's decision. We affirm.

The claimant has the burden of proving that an injury arose out of and in the course of her employment. Ark. Code Ann. § 11-9-102(4)(A)(ii)(b) (Supp. 2007). Where, as here, a claim has been denied because of the claimant's failure to meet her burden of proof, the

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<sup>1</sup>We previously reversed and remanded this case to the Commission for specific findings regarding which elements of a compensable injury White had not met. *White v. Dollar Gen. Stores*, CA 07-077 (Ark. App. Oct. 10, 2007).



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substantial evidence standard of review requires that we affirm if the Commission’s opinion displays a substantial basis for the denial of relief. *Williams v. Ark. Oak Flooring Co.*, 267 Ark. 810, 590 S.W.2d 328 (Ark. App. 1979). We view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission’s findings and affirm if they are supported by substantial evidence, or evidence that a reasonable person might accept as adequate to support a conclusion. *Singleton v. City of Pine Bluff*, 97 Ark. App. 59, 244 S.W.3d 709 (2006).

The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.* Thus, the appellate court is foreclosed from determining the credibility and weight to be accorded to each witness’s testimony. *Id.* It is within the Commission’s province to reconcile conflicting evidence, including the medical evidence, and to determine the true facts. *Cedar Chem. Co. v. Knight*, 372 Ark. 233, 273 S.W.3d 473 (2008); *Stone v. Dollar Gen. Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005).

The evidence presented at the hearing included White’s medical records and the testimony of White, Dollar Store assistant manager Marguerite Eubelis, and store manager Diane Ware. White testified about an incident that she said occurred at 8:55 a.m. on April 28, 2005, when she pushed a tall, heavy cart of potting soil out the store’s front door before opening hours. She stated that her back “popped” when two wheels rolled off the sidewalk’s



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edge and she tried to lift the cart back onto the sidewalk. She testified that she stopped her activities and told Ware about popping her back, that Ware got off the telephone and lifted the cart back onto the sidewalk, and that White mentioned the incident to Ware again around 1:30 or 2:00 p.m. when Ware was finishing work and leaving the store. White stated that she reported the incident to other personnel the next day, that no one at Dollar General directed her to seek medical attention, and that she went on her own to Dr. Cathryn Gonzales on May 4, 2005. White said that an MRI taken after that visit revealed a vertebral fracture.

White testified as follows about a deposition she had previously given and the subject of another back strain: "I had hurt my back lifting at Kroger long ago. There have been more that I have forgotten, usually a strain, nothing else." She explained that she had not mentioned straining her mid-back in May 1991 while lifting a bag of dog food because she had forgotten it. She testified that she received no follow-up treatment for the 1991 strain and she returned to work; that she sustained a lumbar strain a few years later, but she had no MRI or x-rays and was not diagnosed with a skeletal injury; and that she had another lumbar strain in 1995 but, again, no diagnosis of bone injury. Regarding medical notes that she complained of mid-back pain in June 2001, she explained that she had numbness or tingling in her arms and that her neck was x-rayed, but she denied any back injury or fracture then. She acknowledged taking pain medication on a regular basis ever since 1989, quitting work at Kroger in 1999 because of an injury, and telling Ware that she wanted to cut back her



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hours because of the amount of her rent but not in order to qualify for disability. White conceded that she had arthritis in her back but said it was different from the “popping.” She acknowledged not telling Dr. Gonzales about having back pain or problems before April 28, 2005, and she maintained that she reported to Dr. Gonzales her back hurting “a lot” rather than “a little” as shown in the doctor’s report.

Marguerite Eubelis testified that she had been off work on April 28 but White told her, in a conversation two days to a week later, that White had hurt her back pushing the cart off the sidewalk and that Diane Ware had filled out a report. Ware testified that before April 28, she had complied with a request by White to cut her hours because she was trying “to get on disability” and that White later became angry about not getting her hours back when disability was denied.

Ware testified that she did not normally talk on the phone in the morning before the store opened, that White came to the door April 28 to say that the cart had rolled off the sidewalk, that Ware lifted the cart with one hand and put it back, that White did not say until 2:45 p.m. that she had hurt her back lifting the cart, and that Ware did not leave work until 5:00 p.m. Ware stated that she asked White how she could have hurt her back when Ware had lifted the cart, that White became angry and went home, that she did not appear to have any problems with her back then, and that she helped unload boxes from a truck the next day without complaint. According to Ware, White was terminated “by corporate” and escorted from the store at some point. Ware said that she was cursed by White in “an encounter”



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when she came to pick up her final check, that Ware warned White she would be arrested if she returned, and that she was not having problems with her back that day.

Dr. Gonzales's office report of May 5, 2005, shows that White complained of popping her back at work and that muscle spasms were noted. An MRI ordered by Dr. Gonzales, performed on June 14, showed a "compression fracture or Schmorl's node defect involving the superior endplate of L2." Dr. Gonzales wrote in an office note of June 23 that she would try to obtain a neurosurgical evaluation for pain relief measures. Responding to a causation inquiry for purposes of workers' compensation, Dr. Gonzales attributed White's back injury to the work-related incident of April: she noted a "probable" L2 compression and "no previous history of back problems."

The Commission found White not to be a credible witness, attaching "more credibility" to the testimony of Diane Ware. The Commission found that the evidence did not demonstrate a specific incident: it noted White's "later" attempt to report an injury, Ware's testimony that she rather than White had lifted the cart, and White's failure to mention the cart incident when telling Dr. Gonzales that she had popped her back at work. The Commission recognized that muscle spasms can constitute objective medical findings, but it found that the evidence did not demonstrate White's muscle spasm to be causally related to a specific incident of April 28, 2005, or any other date.

Again we note that determinations of credibility and the weight to be given testimony are within the exclusive province of the Commission. *Powers v. City of Fayetteville*, 97 Ark.



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App. 251, 248 S.W.3d 516 (2007). The issue is not whether we might have reached a different result or whether the evidence would have supported a contrary finding; if reasonable minds could reach the Commission's conclusion, we must affirm its decision.

*White v. Frolic Footwear*, 59 Ark. App. 12, 952 S.W.2d 190 (1997). Here, the Commission noted medical records and testimony showing a history of back strain, and the Commission clearly stated that it did not believe White's testimony attributing her back problems to a work-related incident she alleged had occurred on April 28, 2005. The Commission's decision thus displays a substantial basis for the denial of her claim.

Affirmed.

PITTMAN and BAKER, JJ., agree.