

Cite as 2011 Ark. App. 271

ARKANSAS COURT OF APPEALSDIVISION I
No. CA10-930

PHILLIP K. SYKES

APPELLANT

V.

KING READY MIX, INC., ET AL.

APPELLEES

Opinion Delivered April 13, 2011APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [NO. F505997]AFFIRMED ON APPEAL AND
CROSS-APPEAL**JOHN MAUZY PITTMAN, Judge**

This is an appeal and cross-appeal from an order of the Arkansas Workers' Compensation Commission finding appellant permanently partially disabled and awarding wage-loss disability benefits and additional medical treatment. Appellant argues that the Commission erred in finding that he failed to prove entitlement to permanent total disability benefits and in denying medical treatment for his headaches and shoulder pain. He also argues that the Arkansas Workers' Compensation Act violates the Arkansas Constitution because it fails to provide safeguards against bias and corruption. Appellees/cross-appellants argue that the Commission erred in finding that appellant proved entitlement to additional medical treatment for his compensable back and neck injuries and to ten percent wage-loss disability. We affirm on appeal and on cross-appeal.

In determining the sufficiency of the evidence to support decisions of the Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most

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favorable to the Commission's findings and affirm if they are supported by substantial evidence, *i.e.*, evidence that a reasonable person might accept as adequate to support a conclusion. *Dotson v. Little Rock National Airport*, 2009 Ark. App. 820. Questions of weight and credibility are within the sole province of the Commission, which is not required to believe the testimony of the claimant or of any other witness but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Pat Salmon & Sons, Inc. v. Pate*, 2009 Ark. App. 272, 307 S.W.3d 46. We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *Pulaski County Special School District v. Glover*, 2010 Ark. App. 150.

We hold that the Commission did not err in finding that appellant failed to prove entitlement to permanent total disability benefits. "Permanent total disability" means inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment. Ark. Code Ann. § 11-9-519(e)(1) (Repl. 2002). The employee bears the burden of showing inability to earn any meaningful wages in order to prove entitlement to permanent total disability benefits. Ark. Code Ann. § 11-9-519(e)(2) (Repl. 2002). In cases in which the Commission has denied a claim because of a failure to show entitlement to benefits by a preponderance of the evidence, we will affirm if the Commission's opinion displays a substantial basis for the denial of relief. *Williams v. Arkansas Oak Flooring Co.*, 267 Ark. 810, 590 S.W.2d 328 (1979).

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The parties stipulated that appellant sustained compensable injuries to his neck and back in June 2004 when he fell from a ladder in the course of his employment as a cement truck driver for appellee King Ready Mix, Inc. The factual dispute regarding the extent of appellant's disability was resolved largely on the basis of videos showing claimant washing his car, riding a motorcycle, camping, lifting firewood, and other such activities. The administrative law judge noted that neither appellant's physicians nor the conductor of his vocational examination, who testified that appellant was totally disabled, had seen this footage. These post-injury videos, combined with evidence that appellant had exaggerated the extent of his movement limitations when he presented to his treating physicians, convinced the ALJ that appellant had not been candid either with his physicians or in his testimony at the hearing. The ALJ's opinion, which was adopted by and thereby became the opinion of the Commission, stated:

What strikes the viewer of this footage is that Claimant, who appears to turn his head, squat, twist his body, and lift objects of significant size with no apparent difficulty, bears little resemblance to the man who appeared in the hearing room on July 1, 2009, demonstrated great difficulty moving or even staying in a chair, and walked very deliberately with the aid of a cane.

On this basis, the Commission found that appellant had exaggerated his condition, lacked motivation to return to gainful employment, and failed to prove entitlement to permanent total disability benefits. We hold that the opinion contains a substantial basis for denial of the requested relief.

Next, appellant argues that the Commission erred in denying medical treatment for his headaches and shoulder pain because the pain postdated his compensable injury and

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nothing in the record indicates that the pain can be attributed to anything other than his compensable injury. However, this argument is not addressed to the reason for the denial of relief found in the Commission's opinion, which stated:

[Appellant] has not proven entitlement to his other alleged conditions, including headaches. The compensability of the neck and back were stipulated to, but the compensability of any other injuries has not been raised. See *Singleton v. City of Pine Bluff*, 2006 AWCC 34, Claim No. F302256 (Full Commission Opinion filed February 23, 2006)(improper for administrative law judge to address issues not raised at hearing), *rev'd on other grounds*, No. CA06-398 (Dec. 6, 2006) (unpublished).

Clearly, the Commission's denial of relief in this instance was based on procedural grounds independent of the issues relating to the weight and sufficiency of the evidence argued by appellant. Appellant's failure to present any argument directed to the actual reason for the Commission's denial of relief leaves us with nothing to review.

Finally, appellant argues that the Commission erred in ruling that the Arkansas Workers' Compensation Act is not unconstitutional. We find no error. The Commission based its ruling on the prior consideration and rejection of identical arguments by this court. Appellant, in his brief to this court, does not acknowledge our contrary holdings, *e.g.*, *Rippe v. Delbert Hooten Logging*, 100 Ark. App. 227, 266 S.W.3d 217 (2007); *Murphy v. Forsgren*, 99 Ark. App. 223, 258 S.W.3d 794 (2007); *Long v. Wal-Mart Stores, Inc.*, 98 Ark. App. 70, 250 S.W.3d 263 (2007); nor does he attempt to distinguish them or otherwise present a facially good-faith argument for reconsideration of settled law. Instead, he simply repeats arguments that we have previously rejected.

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On cross-appeal, appellees/cross-appellants argue that the Commission erred in finding that appellant proved entitlement to additional medical treatment for his compensable back and neck injuries, and to ten-percent wage-loss disability. Both of these arguments, while couched in terms of sufficiency, are challenges to the Commission's determinations of the weight and credibility of the evidence, and we cannot say that reasonable minds viewing the evidence in the light most favorable to the Commission's findings could not have arrived at the conclusions made by the Commission.

Affirmed on appeal and cross-appeal.

ROBBINS and GRUBER, JJ., agree.