

Cite as 2011 Ark. App. 306

ARKANSAS COURT OF APPEALS

D I V I S I O N I

No. CA 10-965

STACY GENTRY

APPELLANT

V.

ARKANSAS OIL FIELD SERVICES,
INC., and AIG CLAIM SERVICES, INC.

APPELLEES

Opinion Delivered APRIL 27, 2011APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION, [NO. F703691]

REVERSED AND REMANDED

JOHN B. ROBBINS, Judge

Appellant Stacy Gentry appeals the denial of his request for benefits for an injury he sustained to his left ankle while at work for appellee Arkansas Oil Field Services. Gentry sought medical treatment, temporary total disability, and attorney fees. He initially prevailed on his claim before the administrative law judge, but on de novo review by the Workers' Compensation Commission, it rejected his claim. Drug testing established the presence of illegal substances in Gentry. The Commission found that Gentry was not credible when he testified that he did not ingest illegal drugs, that he had not carried his burden of proof to rebut the statutory presumption, and that Gentry's claim would be denied. He appeals, arguing that the Commission arbitrarily ignored one witness's testimony and that it failed to render findings on part of the legal analysis required by statute, necessitating reversal. We

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agree, and therefore, we reverse and remand for the Commission to render sufficient findings of fact and conclusions of law.

We review a decision of the Workers' Compensation Commission to determine whether there is substantial evidence to support it. *Rice v. Ga.-Pac. Corp.*, 72 Ark. App. 149, 35 S.W.3d 328 (2000). Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). We review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings. *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). It is the Commission's province to weigh the evidence and determine what is most credible. *Minn. Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999); *Buford v. Standard Gravel Co.*, 68 Ark. App. 162, 5 S.W.3d 478 (1999). When the Commission denies a claim, we must affirm if the Commission's decision displays a substantial basis for the denial of relief. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000).

Gentry was at work on April 8, 2007, cleaning heavy, long oil-rig pipes. As Gentry stood atop a rack, a fork-lift dropped more pipes in his direction. Although he attempted to outrun and stop the rolling pipes, the pipes rolled over his left foot, resulting in a substantial injury and surgery to repair an open fracture. Medical testing established the presence of amphetamine and methamphetamine, which triggered the statutory presumption that the injury or accident was substantially occasioned by the use of drugs. Ark. Code Ann. § 11-9-

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102(4)(B)(iv)(b) (Supp. 2005). This shifted the burden of proof to Gentry to prove by a preponderance of the evidence that the accident or injury was *not* substantially occasioned by his ingestion of drugs. Ark. Code Ann. § 11-9-102(4)(B)(iv)(d).

Gentry testified that he had worked for this employer for several months, that it was common for employees to stand atop the rack of pipes during this kind of work, that it was the fork-lift driver's fault for letting the pipes roll off at such a high rate of speed, and that he did not ingest illegal substances. Gentry said that perhaps prescription or over-the-counter medications he had used the previous night caused the positive result on the drug test. Expert opinion on drug testing from a forensic toxicologist rebutted Gentry's claims about how he could have tested positive for illegal substances.

The owner of the company and his wife, Mr. and Mrs. Williamson, provided testimony by deposition. Mr. Williamson testified that workers were told not to climb on top of the rack of pipes, that Gentry had stolen from him in the past, and that he had personally witnessed Gentry using methamphetamine. Mrs. Williamson testified that Gentry had told her he had "done drugs" in transit to the hospital due to the extreme pain.

The only other witness was Gentry's co-worker and friend, Andrew Hines, who is not mentioned in the Commission's opinion at all. Hines testified at the hearing in support of Gentry about the work that day, there being no prohibition regarding being atop the rack of pipes, his belief that Gentry did not seem impaired or intoxicated that day, and his opinion that there was nothing Gentry could have done to avoid this accident.

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The Commission noted that Gentry bore the burden to rebut the statutory presumption once the presence of illegal substances was established and that whether a rebuttable presumption is overcome by a preponderance of the evidence is a question of fact for the Commission. *Weaver v. Whitaker Furniture Co.*, 55 Ark. App. 400, 935 S.W.2d 584 (1996). It also noted that the Commission is the sole determiner of the credibility of witnesses and the weight to be given to testimony. *Johnson v. Riceland Foods*, 47 Ark. App. 71, 884 S.W.2d 626 (1994).

The Commission stated that the question in this case was “whether the claimant’s denial of having used methamphetamine and amphetamines on that date of the accident is sufficient to constitute a preponderance of the credible evidence and rebut the presumption that the accident was substantially occasioned by the use of amphetamines and methamphetamine.” The Commission concluded that after consideration of the testimonies of Gentry, the toxicologist, and the Williamsons, “we cannot find that the claimant proved by a preponderance of the evidence that he sustained a compensable injury.”

The Commission erred by focusing solely on whether Gentry was truthful about ingestion of illegal substances. This issue was resolved against Gentry, and it is this fact that triggered the statutory presumption. But there is a secondary question, which is whether he rebutted the presumption that his accident or injury was substantially occasioned by his ingestion of illegal substances—a question regarding the direct causal link. See *ERC Contractor Yard & Sales v. Robertson*, 335 Ark. 63, 977 S.W.2d 212 (1998). That Gentry was dishonest

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about drug use does not answer the causation question. In addition, the Commission omitted any discussion regarding Gentry's co-worker Andrew Hines, whose testimony bore on causation. The Commission may not arbitrarily disregard the testimony of any witness. *Kimbell v. Ass'n of Rehab Indus.*, 366 Ark. 297, 235 S.W.3d 499 (2006); *Crow v. Weyerhaeuser Co.*, 46 Ark. App. 295, 880 S.W.2d 320 (1994).

We are not a fact-finding body; we review findings of fact and conclusions of law rendered by the Commission. It is the Commission's duty to render findings of fact on essential questions of law, and when those are lacking, we are unable to perform any meaningful review on appeal. *Prock v. Bull Shoals Landing*, 2010 Ark. App. 724, at 1; *Wright v. Am. Transp.*, 18 Ark. App. 18, 709 S.W.2d 107 (1986). We reverse and remand for the Commission to render findings of fact on whether Gentry rebutted the presumption that his accident or injury was substantially occasioned by his ingestion of illegal substances.

Reversed and remanded.

GLOVER, J., agrees.

PITTMAN, J., concurs.