

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
LARRY D. VAUGHT, JUDGE

DIVISION I

CA06-1144

June 20, 2007

PATSIE SWEANEY

APPELLANT

APPEAL FROM THE WORKERS'  
COMPENSATION COMMISSION  
[NO. F506464]

V.

SOUTHERN PARAMEDIC SERVICE  
APPELLEE

AFFIRMED

Appellant Patsie Sweaney appeals the decision of the Workers' Compensation Commission finding that she failed to prove that she suffered a compensable, gradual-onset injury to her low back. We affirm.

Sweaney worked from 2000 to 2003 with three different ambulance services as an emergency medical technician or paramedic. Sweaney began working for appellee Southern Paramedic Service as a paramedic in 2003. Her job at SPS required frequent lifting of patients.

On May 14, 2005, Sweaney testified that she was at home sitting on her couch visiting with her brother when she got up to go to the kitchen and felt pain in her hip and leg. She did not seek medical attention that day; however, she did seek medical treatment on May 19, 2005, at the Urgent Care Clinic. She complained of left hip and leg pain but did not relate

the pain to her work. She returned to the clinic May 27, 2005, and reported back pain that radiated down her left leg. Again, she did not relate the pain to her work. On June 4, 2005, Sweaney was working for SPS when she went to the back of the ambulance to lie down. As she entered the ambulance, she was unable to sit down or stand up without assistance.

Sweaney had an MRI on June 6, 2005, that showed a sizeable disk herniation at L5 that was significantly displacing the S1 root. After receiving the MRI results, Sweaney made an appointment with Dr. Morris Ray, a neurosurgeon in Memphis, Tennessee, who performed surgery on June 29, 2005. Sweaney was returned to work by Dr. Ray on August 22, 2005, and was issued a 10% impairment rating to the body as a whole. When Sweaney returned to work at SPS, she was terminated. She started a new job for an ambulance service in Helena, Arkansas, on September 13, 2006.

Sweaney testified that there was no specific incident at work that caused her injury. She testified that did not know when or how she was hurt. She did not even consider that she had hurt her back until she was told she needed surgery. She testified that she had been going to the chiropractor for twenty-seven years before this incident. The most recent chiropractic treatment for her low back was on November 2, 2004. She admitted that she had sustained two different work-related back injuries—one in 2002 that caused her to miss two to three weeks of work and another in 2003 for which she missed no work. Sweaney testified that outside of work, she did not participate in any strenuous activities that would cause her to have a back injury.

Three of Sweaney's co-workers testified—Jerry Duncan, Karen Little, and Mike Cromwell. Duncan testified that he first learned of Sweaney's back problems the night Sweaney tried to lie down in the ambulance. Duncan testified that Sweaney reported to him, in front of several other people, that she did not hurt her back at work and that she was not filing a workers' compensation claim. Duncan testified that Sweaney first reported her back complaints as work-related after she learned she needed surgery. Duncan also testified that Sweaney had another job working part-time at Baptist Hospital in Forrest City, Arkansas.

Little testified that Sweaney told her that she did not want to file workers' compensation papers because she hurt her back at home. Cromwell, Sweaney's partner for over a year, also testified that Sweaney told him that she hurt her back at home. Sweaney told Cromwell on one occasion that she hurt her back loading the dishwasher and on another occasion that she hurt her back while having sexual intercourse.

Sweaney's general practitioner, Dr. Craig McDaniel, testified by deposition that he first saw her for back complaints on June 9, 2005. He testified that the MRI showed nerve-root compression from a herniated disk. After Sweaney had surgery, Dr. McDaniel reviewed her chart, found no mention of a specific injury, visited with Sweaney about her job and her belief as to the cause of her injury, and concluded that he could not think of anything that would have caused her condition other than her work. He went on to opine that, based solely on the history provided by Sweaney, her work was the major cause of her injury.

The administrative law judge found that Sweaney failed to prove that she sustained a gradual-onset back injury arising out of and in the course of her employment. He also found

that Sweaney failed to prove that her need for medical treatment and disability was causally related to an injury sustained while employed by SPS. The Commission affirmed and adopted the opinion of the ALJ. Sweaney has appealed from this decision arguing only that there is a lack of sufficient evidence supporting the Commission's decision.

In reviewing a decision of the Commission, this court views the evidence and all reasonable inferences in the light most favorable to the findings of the Commission. *Magnet Cove Sch. Dist. v. Barnett*, 81 Ark. App. 11, 97 S.W.3d 909 (2003). The Commission's findings will be affirmed if supported by substantial evidence. *Id.* Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.*; see also *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The issue on appeal 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. *Linton v. Ark. Dep't of Correction*, 87 Ark. App. 263, 190 S.W.3d 275 (2004).

Arkansas Code Annotated section 11-9-102(4)(A) (Repl. 2002) defines a compensable injury as:

(ii) An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is:

...

(b) A back or neck injury which is not caused by a specific incident or which is not identifiable by time and place of occurrence;

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-192(4)(D) (Repl. 2002). A claimant seeking workers'

compensation benefits for a gradual-onset injury must prove by a preponderance of the evidence that (1) the injury arose out of and in the course of her employment; (2) the injury caused internal or external physical harm to the body that required medical services or resulted in disability or death; and (3) the injury was a major cause of the disability or need for treatment. Ark. Code Ann. § 11-9-102(4)(A)(ii) and (E)(ii).

In the case at bar, substantial evidence supports the Commission's decision that Sweaney failed to prove that her back injury arose out of and in the course of her employment and that her need for medical treatment and disability was causally related to an injury sustained while employed by SPS. First, there is an abundance of evidence demonstrating that Sweaney suffered from pre-existing back problems. She testified that she had been going to the chiropractor for twenty-seven years, and the medical records reflected that she has been seen by a chiropractor no fewer than fifty times since 1995 for low back and left leg problems. Further, Sweaney sustained at least two prior injuries to her low back—one in 2002 and another in 2003.

Secondly, Sweaney failed to report any type of work injury to her doctors and to her employer until *after* she learned that she needed surgery. Sweaney had at least four opportunities to report to her doctors that her injury was caused by her work—and she did not. Sweaney had many more opportunities to report to her employer that her back injury and pain were caused by her work—and she did not. In fact, she reported to three different co-employees that her back pain was caused by something other than her work.

Finally, Sweaney's own testimony makes it clear that she had no idea what caused her back injury for quite some time: "I thought I may have had cancer or something. I had no idea that there was any injury because I, to my knowledge, never hurt myself." She did not decide that her condition was caused by her work until after she was advised that she had a herniated disk and needed surgery.

Sweaney's focus on the Commission's rejection of Dr. McDaniel's opinion is misplaced. While Dr. McDaniel opined that Sweaney's work was the major cause of her injury, it was Sweaney's burden to establish that her condition was the major cause of her disability or need for treatment; not that her work is the major cause of her disability or need for treatment. *See* Ark. Code Ann. § 11-9-102(4)(E)(ii). As set forth above, there is substantial evidence in the record that supports the Commission's finding that a work-related injury was *not* the major cause of Sweaney's disability or need for treatment. Sweaney's testimony that she did not think that she had sustained a work-related injury until after she was advised she needed surgery, evidence of an injury occurring outside of work, and evidence of a pre-existing back condition is substantial in this case.

Moreover, Dr. McDaniel testified that the only information he considered was Sweaney's history. Based on the record, it is clear that Dr. McDaniel was not made aware of the fifty visits Sweaney made to the chiropractor since 1995 for low back and left leg treatments. Dr. McDaniel was not aware of her two prior low back injuries or the fact that she had another job at another hospital. Dr. McDaniel's records do not include any mention that Sweaney's back condition was caused by her work until July 26, 2005—after she had

surgery. On July 26, Sweaney advised Dr. McDaniel that she thought her injury was caused by her work. Then, on August 26, 2005, Dr. McDaniel authored a letter opining that, based on Sweaney's history, her ruptured disk was a result of her work. We have held that the Commission is not bound by a doctor's opinion that is largely based on facts related by the claimant where there is no sufficient independent knowledge upon which to corroborate the claimant's claim. *See Roberts v. Leo-Levi Hosp.*, 8 Ark. App. 184, 649 S.W.2d 402 (1983).

Sweaney had the burden to prove that she sustained a gradual-onset back injury that arose out of and in the course of her employment and that her need for treatment was causally related to her employment with SPS. This requires more than Sweaney's and Dr. McDaniel's "best guess" that Sweaney's back injury occurred at work. Accordingly, we hold that substantial evidence supports the Commission's decision that Sweaney failed to meet that burden.

Affirmed.

BIRD and BAKER, JJ., agree.