

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
BRIAN S. MILLER, JUDGE

DIVISION II

CA06-1330

June 20, 2007

MARCELLA REED

APPELLANTS

v.

DOLLAR GENERAL STORES

APPELLEE

AN APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[F410550]

AFFIRMED

This is an appeal of the Arkansas Workers' Compensation Commission's September 12, 2006, order denying appellant Marcella Reed's claim for wage-loss benefits. We affirm.

Reed was the general manager of the Dollar General Store in England when she sustained a compensable lumbar spine injury on September 30, 2004. As a result of the injury, she had surgery to remove a free fragment of disc material, but continued to have pain. A follow-up MRI revealed a small central disc herniation at L1-2, which was treated with a steroid injection. Reed's spinal cord was damaged by the injection.

Reed was released to light duty on February 7, 2005. A functional capacity examination was later performed in which the evaluator noted that Reed gave an unreliable effort. Reed reached maximum-medical improvement on February 25, 2005, and was

assigned a ten-percent permanent-partial-impairment rating to the body as a whole.

Reed filed a claim for wage-loss disability benefits, which appellee Dollar General Stores controverted. Reed was forty years old at the time of the April 6, 2006, administrative hearing and had an eleventh grade education with a GED. She believed her workplace injury impeded her ability to work because she now experienced muscle spasms at least four times a week and spinal headaches three to four times a week. Reed testified that her headaches, which at times lasted all day, prevented her from concentrating.

Reed testified that she had unsuccessfully attempted to find employment and that there were no light duty positions available at Dollar General. Although she was offered a stocking position at Dollar General's Lonoke store, she believed it was not a permanent position. She admitted telling her district manager that she was unable to work the position.

Joe Vecchio, Dollar General's former district manager, testified that Dollar General was willing to accommodate any restrictions imposed by Reed's doctor. Vecchio said that he called Reed after she was released to light duty and offered to accommodate her condition. Although they agreed on a date for Reed to return to work, she failed to return to work and later told Vecchio that she had no interest in returning to light duty.

The administrative law judge denied Reed's claim. The ALJ gave considerable weight to Vecchio's testimony and found that Reed lacked the motivation to return to work. The Commission affirmed and adopted the ALJ's decision and Reed appealed.

In reviewing decisions from the Workers' Compensation Commission, the appellate

court views the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings, and we affirm if the decision is supported by substantial evidence. *Wren v. Sanders Plumbing Supply*, 83 Ark. App. 111, 117 S.W.3d 657 (2003). Substantial evidence is relevant evidence, that a reasonable mind might accept as adequate to support a conclusion. *Buford v. Standard Gravel Co.*, 68 Ark. App. 162, 5 S.W.3d 478 (1999). The issue is not whether this court might have reached a different result from that reached by the Commission, or whether the evidence would have supported a contrary finding. *Logan County v. McDonald*, 90 Ark. App. 409, 206 S.W.3d 258 (2005). When a claim is denied because the claimant has failed to show an entitlement to compensation by a preponderance of the evidence, the substantial-evidence standard of review requires us to affirm the Commission's opinion if it displays a substantial basis for the denial of relief. *Wren, supra*.

The wage-loss factor is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. *Logan County, supra*. The Commission is charged with the duty of determining disability based upon a consideration of medical evidence and other matters affecting wage loss, such as the claimant's age, education, and work experience. *Johnson v. Latex Constr. Co.*, 94 Ark. App. 431, ___ S.W.3d ___ (2006). In considering factors that may affect an employee's future earning capacity, the court considers the claimant's motivation to return to work, since a lack of interest or negative attitude impedes our assessment of the claimant's loss of earning capacity. *Id.* An employee will not

be entitled to wage-loss benefits, if subsequent to his or her injury, the employee has a bona fide and reasonably obtainable offer to be employed at wages equal to or greater than his or her average weekly wage at the time of his or her accident. *See* Ark. Code Ann. § 11-9-522(b)(2) (Repl. 2002).

Reed argues that, in finding that she lacked the motivation to return to work, the Commission arbitrarily disregarded her testimony. Although the Commission may not arbitrarily disregard the testimony of any witness, *Fayetteville School District v. Kunzelman*, 93 Ark. App. 160, 217 S.W.3d 149 (2005), credibility determinations and the amount of weight to be given to a witness's testimony are within the sole province of the Commission. *Rheem Mfg, Inc. v. Bark*, 97 Ark. App. 224, ___ S.W.3d ___ (2006). The Commission is not required to believe the testimony of any witness, including the claimant, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Rheem, supra*. We defer to the Commission's findings on what testimony it deems to be credible, and it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. *Fayetteville Sch. Dist., supra*.

In finding that Reed failed to prove her claim by a preponderance of the evidence, the Commission considered her testimony but gave considerably more weight to Vecchio's testimony. Therefore, the Commission did not arbitrarily disregard Reed's testimony. Indeed, when the evidence is viewed in a light most favorable to the Commission's findings, there is substantial evidence supporting the Commission's decision. We, therefore, affirm.

Affirmed.

GLADWIN and MARSHALL, JJ., agree.