

**ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
JOHN MAUZY PITTMAN, CHIEF JUDGE  
DIVISION II**

CA06-399

November 8, 2006

COMQUEST, INC., AND AIG CLAIMS  
SERVICES  
APPELLANTS

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION [NO. F400506]

V.

SMITH THOMPKINS

APPELLEE

AFFIRMED

The appellee in this worker's compensation case was injured in a fall sustained in the course of his employment with Comquest, Inc. After Comquest denied medical treatment and benefits, appellee requested a hearing to determine entitlement. The Arkansas Workers' Compensation Commission found that appellee sustained a compensable ankle and shoulder injury and awarded medical and temporary total disability benefits. On appeal, Comquest, Inc., argues that there is no substantial evidence to support the Commission's finding that appellee sustained a compensable injury to his shoulder or its finding that appellee was entitled to temporary total disability benefits. We affirm.

In reviewing decisions from the Workers' Compensation Commission, we view 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. *Wal-Mart Stores, Inc. v. Sands*, 80 Ark. App. 51, 91 S.W.3d 93 (2002). Substantial evidence is that which a reasonable person might accept as adequate to support a conclusion. *Olsten Kimberly Quality Care v. Pettey*, 328 Ark. 381, 944 S.W.2d 524 (1997). 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. *White v. Georgia-Pacific Corporation*, 339 Ark. 474, 6 S.W.3d 98 (1999). The determination of the credibility and weight to be given a witness's testimony is within the sole province of the Workers' Compensation Commission; 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 it deems worthy of belief. *Farmers Cooperative v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002). The Commission has the duty of weighing the medical evidence as it does any other evidence, and its resolution of the medical evidence has the force and effect of a jury verdict. *Continental Express v. Harris*, 61 Ark. App. 198, 965 S.W.2d 811 (1998).

Viewing the evidence in the light most favorable to the Commission's findings, the record shows that appellee was employed by Comquest to install and maintain cell phone towers. In the course of this employment on September 17, 2004, appellee stumbled and fell

at a job site while carrying an expensive item of computer equipment in his left hand. Appellee twisted as he fell, attempting to catch himself with his right arm so as to avoid damage to the equipment. He was unable to do so, and instead landed on his right shoulder. Appellee suffered immediate acute ankle pain and believed that he had broken his leg, which began to swell. He was treated for his ankle injury at an emergency room and by Dr. Patrick Antoon. On January 28, 2004, appellee returned to Dr. Antoon complaining of pain in his right shoulder. As treatment continued, appellee's complaints of shoulder pain were evidenced by muscle spasms and a cervical MRI performed on September 17, 2004. Appellee underwent shoulder surgery on September 30, 2004. The surgeon, Dr. Gati, observed signs of impingement, degenerative changes, and the presence of a loose body in appellee's shoulder. On this evidence, the Commission found that, although appellee had degenerative shoulder problems prior to his work-related fall, he sustained injury in that fall that constituted a compensable aggravation of his preexisting degenerative condition.

In workers' compensation law, an employer takes the employee as he finds him, and employment circumstances which aggravate preexisting conditions are compensable. *Heritage Baptist Temple v. Robison*, 82 Ark. App. 460, 120 S.W.3d 150 (2003). An aggravation is a new injury resulting from an independent incident, *Maverick Transportation v. Buzzard*, 69 Ark. App. 128, 10 S.W.3d 467 (2000), and an aggravation of a preexisting noncompensable condition by a compensable injury is, itself, compensable. *Oliver v. Guardsmark, Inc.*, 68 Ark. App. 24, 3 S.W.3d 336 (1999). An aggravation, being a new

injury with an independent cause, must meet the definition of a compensable injury in order to establish compensability for the aggravation. *Heritage Baptist Temple v. Robison, supra*.

Appellant contends on appeal that the Commission erred in finding that appellee's shoulder condition was aggravated by his fall because there was no "objective evidence of an injury that was causally related to a work related incident." We do not agree. Here, appellee's physician testified to the causal connection on several occasions, including stating that:

I think he definitely aggravated his shoulder when he fell, if he caught his fall with the computer in his hand. So, I think that it's related to an aggravation anyway, if it wasn't the original cause, he definitely aggravated it.

Appellants also argue that the Commission erred in finding a compensable aggravation because there were no objective medical findings of the causal connection between the fall and the exacerbation of appellee's shoulder injury. However, objective findings are not required to prove a causal connection, *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999), and we think that the surgeon's observation of connective-tissue damage and a loose body in appellee's shoulder during the surgery could reasonably be seen as evidence of recent traumatic origin and so satisfy the requirement of objective findings supporting the claim of injury.

Finally, appellant argues that there is no substantial evidence to support the Commission's finding that appellee remains within his healing period and is thus entitled to

temporary total disability benefits. We do not agree. Appellant's physician testified that, because of appellant's right shoulder pain and back issues, he did not believe appellee was ready to go back to work, and we think that on this basis reasonable minds could conclude that appellee remained in his healing period and was entitled to temporary total disability benefits.

Affirmed.

GRIFFEN and GLOVER, JJ., agree.