ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JOHN B. ROBBINS, JUDGE

DIVISION I

CA 06-455

JOHNNY JACOBS
APPELLANT

V.

WOODRUFF COUNTY NURSING HOME and AIG CLAIM SERVICES, INC.
APPELLEES

NOVEMBER 15, 2006

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION [NO. F308477]

AFFIRMED

Appellant Johnny Jacobs appeals the denial of benefits regarding a claim he filed, which stated that he slipped and fell while performing janitorial services for appellee Woodruff County Nursing Home on October 9, 2002. He sought medical benefits and related temporary disability benefits, reserving other issues for a later determination. He contended that this claim arose as an aggravation of a prior herniation at L4-5. The employer controverted the claim in its entirety, contending that appellant had not proven that he fell at work and injured himself on that date, and further, that any need for treatment was for a recurrence of a long-standing back problem dating back to 1999. The administrative law judge (ALJ) denied benefits, appellant appealed, and a majority of the Commission affirmed

and adopted the ALJ's decision. Appellant filed the present appeal. After applying the proper standard of review, we affirm.

This court reviews decisions of the Workers' Compensation Commission to determine whether there is substantial evidence to support it. *Rice v. Georgia-Pacific Corp.*, 72 Ark. App. 149, 35 S.W.3d 328 (2000). Substantial evidence is that 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). The issue is not whether we might have reached a different decision or whether the evidence would have supported a contrary finding; instead, we affirm if reasonable minds could have reached the conclusion rendered by the Commission. *Sharp County Sheriff's Dep't v. Ozark Acres Improvement Dist.*, 75 Ark. App. 250, 57 S.W.3d 764 (2001). 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); *Foxx v. American Transp.*, 54 Ark. App. 115, 924 S.W.2d 814 (1996). Where a claim is denied, we affirm if there is a substantial basis upon which the Commission denied relief. *Moncus v. Billingsley Logging & American Ins. Co.*, __ Ark. __, __ S.W.3d __ (May 18, 2006).

With these parameters of review, we examine the evidence presented to the Commission. Appellant, a man in his thirties, testified that although he had suffered a low-

back injury in a vehicular accident in 1998 or 1999 that left him with a herniation at L4-5, he had no major difficulty until he slipped and fell while stripping the floor in the nursing home on October 9, 2002. Appellant testified that he told his supervisor, Doris Wright, and that she filled out an accident report at that time. He also said that he was sent that day by Ms. Wright to the McCrory Health Center. There were medical records to substantiate this statement. Ms. Wright was not called to testify on his behalf, and there was no contemporaneous accident report entered into evidence. Appellant called his wife to testify, who stated that she remembered appellant coming home on October 9 stating that he had to go to the clinic because he fell, and she remembered him taking a lot of pain medication. His wife was a former employee of the nursing home.

The medical records from the McCrory Health Center on October 9, 2002, reflected that appellant reported having fallen at work and hurting his right side. A right-sided contusion was noted on the medical chart, and appellant was released to go back to work. Appellant also went to his family physician, Dr. Wilson, that day and said that he fell that morning and was experiencing pain radiating into the right leg.

Appellant returned to Dr. Wilson in early November 2002, complaining of back pain radiating into his thighs. Dr. Wilson was aware that an MRI conducted in February 1999 showed a herniation at L4-5. The 1999 MRI report stated that there was degenerative disc disease at that level, along with "disc fragment flattening ventral aspect of the thecal sac but not causing any obvious stenosis of spinal canal or foramina. No other disc herniations

are seen. No intrathecal abnormalities." Dr. Wilson stated that appellant said his pain had increased since then, and that appellant wanted the herniation repaired. Dr. Wilson ordered a new MRI, which showed the bulging disc at L4-5 and minimal bulging at L5-S1, with accompanying spondylosis. The MRI report dated November 15, 2002, stated that the herniation at L4-5 was causing indentation on the ventral aspect of the thecal sac and encroachment on the left lateral recess, along with right posterolateral herniation with encroachment on the right neural foramen. There were no intrathecal abnormalities. Dr. Wilson prescribed pain medication.

Appellant took medication and worked for a couple more weeks until Dr. Wilson took him off work because the medication was not helping. Dr. Wilson referred him to Dr. Covey, who saw appellant in December 2002. Dr. Covey recorded the history of this injury given him by appellant, which was that he had an episode of this pain in 1999 and "had a recurrence of these symptoms again over the past couple of months, which brought him back to the attention of Dr. Wilson."

Also in December 2002, appellant filled out a group disability income claim form in which he stated that he fell while stripping the floor at work, which caused him low back pain, although he had non-work-related back pain dating back to 1998. The employer filled out part of that application, in which the personnel manager stated that she did not believe that this disability was due to a condition arising out of his employment.

Dr. Covey tried epidural steroid injections that did not help. Dr. Covey ordered another MRI in March 2003, which showed a Grade 5 annular tear on the left of L4-5, a Grade 4 tear at L5-S1, and a Grade 1 tear at L3-4. Appellant intermittently worked and was eventually placed on part-time light duty.

Dr. Covey sent appellant to Dr. Chakales in May 2003 for the purpose of considering surgical intervention. Appellant stated a history of increased pain on October 9, 2002, but there was no mention of a work injury; the history noted a many-year history of back trouble. Dr. Chakales believed that appellant had true sciatic pain, and he suggested hemilanimotomy at L4-5. Appellant underwent surgery in May 2003. After healing from surgery and undergoing physical therapy, appellant did not think that the surgery helped much.

Appellant filled out another disability income claim form in late May 2003, in which he stated that he was disabled from back surgery, and that he had suffered the same back symptoms dating back to 1998. Dr. Covey noted on this form that symptoms arose again on October 9, 2002, that he had suffered from similar problems in the past, and that the present condition did not arise out of his employment.

Appellant filled out a workers' compensation claim form on September 27, 2003. Appellant was declared at maximum medical improvement in May 2004 and was given a ten-percent permanent partial impairment rating to the body as a whole by Dr. Chakales.

Appellant's counsel wrote to Drs. Wilson and Covey asking that they give their opinion as to whether the work-related incident was the major cause of appellant's condition

for which he was being treated. Dr. Wilson so opined, but Dr. Covey did not render an opinion. Dr. Chakales stated in a letter that if the history given him by appellant was correct, then he had to assume that the problem appellant suffered was a result of his work injury.

The ALJ considered the medical evidence, along with disability income applications. The ALJ found that appellant had not proven by a preponderance of the evidence that he sustained a compensable back injury on October 9, 2002, at work, and alternatively that any work injury was not the major cause of his condition for which he was being treated. The ALJ examined the law in Arkansas regarding an "aggravation" versus a "recurrence" within the Workers' Compensation Act. She set forth that a "recurrence" is not a new injury but another period of incapacity resulting from a previous injury, also stated to be a second complication that is a natural and probable consequence of a prior injury. *See*, *e.g.*, *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000). She noted that an "aggravation" is a new injury resulting from an independent incident, which must meet the proof requirements for a compensable injury. *See id.*

The ALJ determined that appellant had admittedly suffered from back problems, and that though appellant sought medical attention on October 9, 2002, she did not find credible evidence that an injury or aggravation occurred on that date. She noted that there were no witnesses to this purported fall at work to testify on his behalf, and that there was no accident report filled out by his employer admitted into evidence. The ALJ noted inconsistency in the medical notes, particularly where many of the medical records after October 9, 2002, made

no mention of any work-relatedness of his back complaints. It was important to the ALJ that in later disability applications, appellant and his doctor affirmatively claimed that his disability was not work related. The ALJ also found it notable that Drs. Wilson and Chakales opined that his current back problems were caused by his work injury, but that this was not compelling evidence because those opinions relied on the history given them by appellant. Therefore, the ALJ found that appellant had failed to carry his burden to prove by a preponderance of the evidence that he fell and hurt himself at work on October 9, 2002, and further that if he had, that this fall was not the major cause of his condition that required medical attention.

Appellant appealed this decision to the Commission, which affirmed and adopted the ALJ's decision by a two-to-one vote of Commissioners. Appellant now appeals to our court. Appellant argues (1) that there is no need to prove "major cause" when permanent benefits are not being sought and when this was an aggravation by a specific incident; (2) that the Commission and ALJ failed to consider all the evidence presented at the hearing; and (3) that reasonable minds could not conclude that appellant failed to prove entitlement to benefits for an aggravation or new injury.

Under Ark. Code Ann. § 11-9-102 (Supp. 2005), two types of injuries are recognized: accidental and gradual onset. An accidental injury is defined as caused by a specific incident and is identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102(4)(A)(i). For an accidental injury, it is not necessary that the claimant prove that the injury is the major

cause of the disability or need for treatment. *See Estridge v. Waste Mgmt.*, 343 Ark. 276, 33 S.W.3d 167 (2000); *Williford v. City of North Little Rock*, 62 Ark. App. 198, 969 S.W.2d 687 (1998); *Second Injury Fund v. Stevens*, 62 Ark. App. 255, 970 S.W.2d 331 (1998); *Medlin v. Wal-Mart Stores*, 64 Ark. App. 17, 977 S.W.2d 239 (1998); *Farmland v. Dubois*, 54 Ark. App. 141, 923 S.W.2d 883 (1996). Clearly, appellant's herniated disc and the symptoms he suffered emanating from that herniation were the major cause of his need for treatment and surgery and his resulting disability. Appellant is correct that if he proved that he suffered from a specifically-identified work-related fall on October 9, 2002, then it would not be necessary to show the major cause for the need for treatment.

The problem here with appellant's case was that it was not found that appellant suffered from a fall and injury at work on that date. To the extent that the alternative finding was in error regarding "major cause," it is immaterial where there is another basis upon which to uphold the Commission's decision. We cannot reverse the decision of the Commission where the alternative basis is sound.

It is within the Commission's sole discretion to determine the credibility of each witness and the weight to be given to their testimony. *Wade v. Mr. C. Cavenaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *General Elec. Railcar Repair Servs. v. Hardin*, 62 Ark. App. 120, 969 S.W.2d 667 (1998). A party's testimony is never considered uncontroverted. *Lambert v. Gerber Products Co.*, 14 Ark. App. 88, 684 S.W.2d 842 (1985). The ALJ and the Commission simply did not believe that appellant fell at work as he described.

Appellant also contends that in making the decision to deny benefits, the ALJ and the Commission failed to consider all of the evidence, shown by the failure of the ALJ to discuss each document and whether each supported the existence of a work-related fall and resulting injury. We cannot agree. The ALJ's opinion was fifteen-pages long, with a thorough discussion of the evidence presented. The ALJ discussed the first visit to the McCrory Health Center and appellant's first application for short-term disability as the two documents that suggested that appellant injured himself at work. She pointed out that there were no more medical records to support a claim that he fell at work, and she noted that he did not file for workers' compensation benefits until nearly a year after this alleged injury. She weighed this against the fact that a later disability application outright stated that his claim of disability was not work related. She considered that the doctors who thought that appellant's need for treatment was occasioned by a work incident were informed only by appellant's history to them. Appellant had the burden of persuasion, and the ALJ determined that appellant had not shown that he hurt himself at work and that, instead, what appellant was experiencing stemmed solely from a natural and probable consequence of his preexisting L4-5 herniation. While we may not have decided as the Commission did, we are required to give the Commission certain enumerated deferences in weighing the evidence. The Commission is not required to believe the testimony of any witness, and it may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Holloway v. Ray White Lumber Co.*, 337 Ark. 524, 990 S.W.2d 526 (1999). The

Commission may accept or reject medical opinions and determine their medical soundness and probative force. *Green Bay Packaging v. Bartlett*, 67 Ark. App. 332, 999 S.W.2d 695 (1999). Consequently, we affirm the Commission's decision to deny this claim for benefits as not meeting the specific-incident requirement for an aggravation.

Affirmed.

NEAL and CRABTREE, JJ., agree.