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

DIVISION III

CA 06-542

DECEMBER 6, 2006

CHARLES SMITH

APPELLANT

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION

V.

[NO. F408458]

SUPERIOR INDUSTRIES and
CROCKETT ADJUSTMENT

APPELLEES

AFFIRMED

Appellant Charles Smith appeals the denial of additional benefits by the Workers' Compensation Commission in his claim against appellee Superior Industries. Appellant was treated briefly for a strain injury to his left wrist, but he contended that he also suffered from a ligament tear in his left wrist and bilateral carpal tunnel syndrome that should have also been considered work-related and compensable. He sought related surgical and medical intervention, related temporary total disability benefits, and attorney fees. While the administrative law judge (ALJ) awarded appellant all the benefits he sought, on appeal to the Commission, it found that appellant had not carried his burden of proof on causation. He appeals, arguing that the Commission's decision lacks substantial evidence to support its

conclusion. We disagree, holding that there is a substantial basis upon which to deny additional benefits. Therefore, 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, and we affirm if its findings are supported by substantial evidence. *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).

With these parameters, we examine the evidence presented to the Commission. Appellant worked for appellee, a wheel manufacturer, for approximately five years in several different capacities. He worked eight-hour shifts five days per week. The duties were leak-

testing, casting, inspecting, and packing. All of these jobs involved handling wheels in preparation for shipping, but he was moved from duty-to-duty as the needs arose.

On the day he was hurt, July 22, 2003, he had been working shifts on the pack line for two years. This job required that he take a wheel off a hanger, and then set it in front of himself and inspect it. He said that during his shift that day, he felt his left wrist pop as he took a wheel off the hanger. Appellant described this injury as causing immediate pain and swelling, and rasing a knot or bubble on his wrist. He immediately reported this to supervisory personnel, who sent him to a company medical professional. This was nurse practitioner Max Beasley, who took an x-ray and gave appellant medication and a splint to wear for this wrist strain. Beasley noted in a letter that appellant denied any tingling or weakness in his left-hand fingers. A report of injury, for workers' compensation purposes, was filled out by the medical clinic on July 24, and on July 25 by the employer. Both forms noted reports of pain in the left wrist. Appellant was seen again for this strain on July 31, wherein appellant reported significant improvement and stated that he was ready to go back to work without restrictions. The medical note listed no tenderness or swelling, and listed full range of motion. Appellant was released. This injury was accepted as compensable up to this date. Thereafter, appellant worked as ususal.

On September 26, 2003, appellant presented to his family doctor, Dr. Byrum, for the stomach flu. Appellant told Dr. Byrum that he had experienced progressive and persistent numbness and tingling in his hands. Dr. Byrum said he understood that appellant had worked

for two and a half years with repetitive inspection of tires. Dr. Byrum took appellant off work, gave him bilateral splints to wear, gave him medication, and referred him to Dr. Cooper, an orthopedist, for evaluation of possible carpal tunnel syndrome.

Appellant reported to Dr. Cooper on October 13 that he had suffered a "pop" in his left wrist at work a couple of months previously, and that he subsequently developed numbness in both hands that came and went. Dr. Cooper thought that "it seems likely this is work related" though he could not say for certain. Appellant underwent nerve conduction studies on October 23 that showed moderate bilateral carpal tunnel syndrome. Appellant saw another orthopedic surgeon, Dr. Benafield, on November 3, and the clinic note stated that appellant popped his wrist at work on September 18. Also on November 3, appellant underwent an MRI, which revealed in the left wrist a focal tear of the triangular fibrocartilage with moderate fluid within the distal joint. Appellant underwent surgery on November 25 to correct these left-sided maladies, performed by Dr. Benafield. Appellant underwent right-sided carpal tunnel release surgery on January 16, 2004. Dr. Benafield opined in a clinic note dated May 11, 2004, that the tear and the carpal tunnel syndrome were related to his work. Dr. Benafield reiterated that opinion in a letter dated May 16, 2004. A comprehensive functional capacity evaluation was conducted in July 2004, and the results were that appellant had provided consistent performance that showed he could return to medium work, with some weight limitations.

The Commission found that appellant failed to prove by a preponderance of the evidence that his torn tendon was causally related to his work injury in July 2003. It noted that he had heard a "pop" in July 2003, was treated with medication, and went back to work using a splint for a while, and that when he complained to his family doctor about numbness and was ultimately given diagnostic tests that showed the presence of a tear, it was months later, in November 2003. The Commission also found that appellant had failed in his burden to show that his bilateral carpal tunnel syndrome was caused over time by his work. The Commission determined that appellant's history about numbness and tingling was inconsistent. The Commission mentioned that appellant told one doctor that he suffered from numbness and tingling for two and a half years, told another doctor he said he had numbness beginning a month or two after his injury in July, told another doctor that his hands had been going to sleep for over a year, and yet there was no mention of these symptoms in the two July 2003 treatments provided by the nurse practitioner. The Commission concluded that because appellant was contradictory in his reports to the various medical providers, "the claimant is not a credible witness." This was a two-to-one vote by the Commissioners. Appellant pursued the present appeal from the Commission's decision.

On appeal to us, appellant argues that as to the tendon tear, the Commission's decision is at odds with the great weight of the evidence, particularly where the x-ray in July 2003 was not sensitive enough to pick up the tendon tear. It was only revealed by MRI, performed in November 2003. He contends that he was hurt on July 23, 2003, in the specific incident

when he heard his wrist pop, and that this was the only reasonable explanation for why his tendon was damaged. With regard to bilateral carpal tunnel syndrome, appellant argues that the Commission arbitrarily disregarded his testimony and decided that he was not credible. Appellant notes that he did hand-intensive work for appellee for years, that he had a good work record, that there was no other explanation for why he developed carpal tunnel syndrome, that he should not be penalized for not having the medical knowledge to understand that his work caused his condition, and that his doctors all believed that this gradual-onset syndrome was causally related to his work. Appellant adds that carpal tunnel syndrome symptoms are not constant, but rather wax and wane.

Appellant implies that the majority of the Commissioners erroneously substituted their determination regarding credibility for that of the ALJ. We disagree in that we do not review the decision of the ALJ but rather we determine whether the Commission's decision upon de novo review is supported by substantial evidence. *See*, *e.g.*, *Jones v. Scheduled Skyways, Inc.*, 1 Ark. App. 44, 612 S.W.2d 333 (1981). The ALJ's findings, when they are not affirmed and adopted by the Commission, are irrelevant for purposes of appeal to our court. *See*, *e.g.*, *Scarbrough v. Cherokee Enters.*, 306 Ark. 641, 816 S.W.2d 876 (1991); *Graham v. Turnage Empl. Group*, 60 Ark. App. 150, 960 S.W.2d 453 (1998); *Crawford v. Pace Indus.*, 55 Ark. App. 60, 929 S.W.2d 727 (1996). In workers' compensation cases, the Commission functions as the trier of fact. *Blevins v. Safeway Stores*, 25 Ark. App. 297, 757 S.W.2d 569 (1988). The credibility of witnesses and any conflict and inconsistency in the

evidence is for the Commission to resolve. *Warwick Elecs., Inc. v. Devazier*, 253 Ark. 1100, 490 S.W.2d 792 (1973). A majority of the Commission is required to reach a decision. *See* Ark. Code Ann. § 11-9-204(b)(1) (Repl.1996); *see also S & S Constr., Inc. v. Coplin*, 65 Ark. App. 251, 986 S.W.2d 132 (1999). Two-to-one decisions are frequently issued by the Commission, and those are majority decisions. *S & S Constr., Inc. v. Coplin*, *supra.*

Appellant's claim for the torn tendon failed because it was not diagnosed until months after the specific incident in July that appellant contends was the cause of the tear. Indeed, appellant was treated by a nurse practitioner over the course of two weeks, and at the end of that time, he reported vast improvement and readiness to return to work without any difficulty. While he complained of general numbness and tingling later to other medical providers and he was taken off work in late September, and there was a tear found in November, he failed to carry his burden of proving that the July work incident was the cause of the tear. Because of this failure, and because the Commission is the sole determiner of credibility and the weight to be given any evidence before it, we hold that the Commission's decision is supported by substantial evidence on this point.

Appellant's other primary contention on appeal is that the Commission's decision, that he did not prove a causal connection between his bilateral carpal tunnel syndrome and his work, is not supported by substantial evidence. Carpal tunnel syndrome is a gradual-onset injury; it is not necessary that appellant prove that his injury was caused by rapid repetitive motion. *See Kildow v. Baldwin Piano & Organ*, 333 Ark. 335, 969 S.W.2d 190 (1998). 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 his or 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) & (E)(ii) (Supp. 1999). It is causation that the Commission found lacking in this case.

It is well settled that a decision by the Workers' Compensation Commission should not be reversed unless it is clear that fair-minded persons could not have reached the same conclusion if presented with the same facts. *Foxx v. American Transp.*, 54 Ark. App. 115, 924 S.W.2d 814 (1996). Appellant provided evidence that, if believed, would have supported his claim. His doctors believed that his work caused the carpal tunnel syndrome. His work involved hand-dominant activity. However, there were discrepancies in his testimony about the onset and duration of symptoms. Furthermore, appellant agreed that his job duties varied from day to day and shift to shift. His more pronounced symptoms did not come to the fore until after he was taken off work. It was for the Commission to decide what was believable. The mere fact that appellant reported a carpal-tunnel injury to appellee did not require the Commission, absent other evidence supporting a causal connection, to find that he proved by a preponderance of the evidence that his carpal-tunnel symptoms were work-related. *But see Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001). We affirm this point.

Because of the disposition of these two points on appeal, this renders moot any discussion about related temporary total disability benefits or attorney fees. After consideration of this appeal under the proper standard of review, we affirm.

Affirmed.

PITTMAN, C.J., and GLADWIN, J., agree.