

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

DIVISION II

CA07-1054

April 30, 2008

BEVERLY MORRIS

APPELLANT

APPEAL FROM ARKANSAS
WORKERS' COMPENSATION
COMMISSION [NO. F511742]

V.

BAPTIST HEALTH

APPELLEE

AFFIRMED

The appellant filed a claim for workers' compensation benefits alleging that she sustained a gradual-onset injury to her pelvis arising out of and in the course of her employment with appellee Baptist Health. After a hearing, the Arkansas Workers' Compensation Commission found that she failed to prove that she sustained such an injury. On appeal, appellant argues that the Commission erred in finding that she failed to prove a compensable gradual-onset injury and in finding that medical testimony regarding causation adduced by appellant was not stated within a reasonable degree of medical certainty. We affirm.

Under our workers' compensation law, accidental injuries that arise out of and in the course of the employment and that are caused by a specific incident and identifiable by time

and place of occurrence are generally compensable, whereas gradual-onset injuries are compensable only under limited circumstances. *Dorris v. Townsends of Arkansas, Inc.*, 93 Ark. App. 208, 218 S.W.3d 351 (2005). Here, appellant asserted that she sustained a work-related pelvic injury through gradual onset that was compensable under Ark. Code Ann. § 11-9-102(4)(A)(ii)(a) (Supp. 2007) because it was caused by rapid repetitive motion. The term “rapid repetitive motion” is not defined by statute. The Arkansas Supreme Court established a “two-pronged test” in *Malone v. Texarkana Public Schools*, 333 Ark. 343, 969 S.W.2d 644 (1998), stating that “(1) the tasks must be repetitive, and (2) the repetitive motion must be rapid,” further explaining that “[t]he repetitive tasks must be completed rapidly.” *Id.* at 350, 969 S.W.3d at 647-48.

Appellant argues that the Commission erred in finding that she failed to prove that her condition was caused by rapid repetitive motion. In reviewing decisions of the 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. *Dorris v. Townsends of Arkansas, Inc.*, *supra*. 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 Corp.*, 339 Ark. 474, 6 S.W.3d 98 (1999). Where, as here, the Commission has denied a claim because of the claimant's failure to meet her burden of proof, the

substantial evidence standard of review requires that we affirm if the Commission's opinion displays a substantial basis for the denial of relief. *Williams v. Arkansas Oak Flooring Co.*, 267 Ark. 810, 590 S.W.2d 328 (Ark. App. 1979).

As the Commission noted in this case, appellant testified that her task of delivering medicine to various parts of the hospital was rapid and repetitive, whereas appellant's supervisor testified to the contrary. The crux of appellant's argument is her assertion that the Commission resolved this discrepancy in the evidence erroneously because "[i]t is evident that the testimony of appellant with regard to the types and frequency of assignments carries more weight than that of [her supervisor]." This argument states no grounds for reversal. It is the function of the Commission, and not of this court, to determine credibility of witnesses and the weight to be given their testimony. *Strickland v. Primex Technologies*, 82 Ark. App. 570, 120 S.W.3d 166 (2003). Questions of weight and credibility are within the sole province of the Commission, which is not required to believe the testimony of the claimant or of any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Id.*; *Wal-Mart Stores, Inc. v. Sands*, 80 Ark. App. 51, 91 S.W.3d 93 (2002); *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). Once the Commission has made its decision on issues of credibility, we are bound by that decision. *Emerson Electric v. Gaston*, 75 Ark. App. 232, 58 S.W.3d 848 (2001). Viewing the evidence, as we must, in the light most favorable to the Commission's findings and giving the testimony its strongest probative force in favor of the action of the Commission, *id.*, we cannot say that the Commission erred in finding that appellant failed to prove that she

sustained an injury caused by rapid repetitive motion. In light of our resolution of this question, the remaining issue is moot, and we therefore do not address it.

Affirmed.

ROBBINS and MARSHALL, JJ., agree.