

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
JUDGE DAVID M. GLOVER

DIVISION IV

CA07-1092

May 14, 2008

GEORGIA PACIFIC CORPORATION
and SEDGWICK CMS, INC.
APPELLANTS

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [F201514]

V.

HUEY P. BRADSHAW

APPELLEE

AFFIRMED

In this workers' compensation case, the administrative law judge determined that appellee, Huey Bradshaw, failed to prove by a preponderance of the evidence that he sustained a compensable gradual-onset injury arising out of and during the course and scope of his employment on the basis that there were no objective findings to support his claim. The Commission reversed the ALJ's decision, finding that there were objective findings to support diagnoses of de Quervain's disease of the right wrist and carpal-tunnel syndrome. The Commission also awarded Bradshaw temporary-total disability from October 2001 to a date yet to be determined. Appellants, Georgia-Pacific and Sedgwick Claims, now bring this appeal, arguing that there is not substantial evidence to support the Commission's findings that Bradshaw sustained a compensable injury in October 2001 or

that he is entitled to reasonable and necessary medical benefits and temporary-total disability benefits from October 2001 to a date to be determined. We affirm the Commission's decision.

In workers' compensation cases, this court views the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings and affirms the decision if it is supported by substantial evidence. *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Air Compressor Equip. v. Sword*, 69 Ark. App. 162, 11 S.W.3d 1 (2000). 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. *Slaughter v. Hampton*, 98 Ark. App. 409, ___ S.W.3d ___ (2007). It is the Commission's province to determine witness credibility and the weight to be given to each witness's testimony. *Johnson v. Riceland Foods*, 47 Ark. App. 71, 884 S.W.2d 626 (1994).

At the hearing, Bradshaw testified that he began working at Georgia-Pacific the first week of July 2001; that he did not have any prior injuries or problems with his right arm or wrist; and that he began having problems with his right arm and wrist around the first part of October 2001. He explained that his job as an "offbearer" required him to pull quarter-inch thick wood that was eight feet long and two to four feet wide off a belt into a buggy at a "super fast" rate of speed. He said that in a ten or eleven-hour workday,

he would fill five to seven buggies with wood, and that each loaded buggy weighed two or three thousand pounds.

Bradshaw testified that he began having problems performing his job around the first part of October; that his right wrist would swell and he would have pain; that he had to “wiggle” his fingers to get his wrist to “wake up”; that once his fingertips went numb; and that he did not have any problem with his left wrist. He said that he reported these problems to his supervisor, David McKey, who made a crude joke in response, told Bradshaw to “go on and get on the chain,” and did not send Bradshaw to see a doctor. Bradshaw worked until the strips of wood actually began slipping out of his hand, at which time he sought medical attention on his own. He was given medicine and a sling for his right wrist, as well as a note restricting him to light duty; however, when he presented the note to Georgia-Pacific, he was refused light duty. Bradshaw’s doctor then took him off work completely because of the lack of light-duty work; Bradshaw continued to receive medical treatment, and he was not released to return to work.

Bradshaw testified that he still had problems with his wrist, that he was in pain, and that his right wrist swelled if he “did stuff.” He said that a car wreck in 2004 caused his right arm and wrist to swell, but that it only “shook it up” and that the wrist problems were present prior to the 2004 wreck.

Bradshaw was terminated from Georgia-Pacific after he was off work for over a year, and he testified that his only other employment since then was three days at a company called Remco. Bradshaw said that he also painted some houses and mowed

some lawns, but that even though he had “hustled” and tried to find employment, most employers would not consider a person with an outstanding workers’ compensation case. He also admitted that he had gone fishing from ten to fifteen times from October 2001 to May 2005.

With regard to his personnel records, Bradshaw noted that the records indicated on one day that he had a toothache, but he said that the toothache did not occur on the job and he had gone to the dentist on his day off, so he did not miss any work. Bradshaw noted other days that the report reflected he was off for various things, including the fact that he came in late on October 4, 2001, because his wife had car trouble. Bradshaw agreed that there was no notation in his record that he had reported to McKey that he had injured his wrist in a work-related injury; however, he still claimed that he had reported the injury. He also denied that he had told McKey that he had injured his wrist working on his wife’s car when it broke down.

David McKey, Bradshaw’s supervisor, testified that there were five offbearers pulling wood off the belt, and that an offbearer only pulled wood about fifty percent of the time, because during the other time the wood was being automatically stacked. McKey also stated that he was the person who filled out Bradshaw’s report, and that there were no absences noted due to an injury on the job, although there was a notation that Bradshaw had called in on one day with a toothache. McKey said that if an injury had been reported, he would have put it on the report, and that he did not have a habit of writing down incorrect information. McKey said that Bradshaw told him that he hurt his

wrist working on his wife's car. McKey also denied making a crude comment to Bradshaw about how he hurt his wrist.

Bradshaw was initially seen by his physician, Dr. Wyatt Webb, on October 25, 2001. Although, as the Commission noted in its opinion, most of Dr. Webb's notes are illegible, the words that can be made out are "two weeks," "pulling wood," and "wrist." On November 7, 2001, Dr. Webb noted "tendinitis wrist" and also reported the same thing on the Georgia-Pacific "Certification by Health Care Provider of Serious Health Condition" on November 21.

Craig Lowery, a physical therapist to whom Bradshaw was referred by Dr. Webb, first saw Bradshaw on March 4, 2002. On that date, Lowery observed, among other things, "inflammation of R brachioradialis, extensor carpi radialis longus, and supinator," as well as "inflammation of right hand, forearm." One of Lowery's goals was "to decrease tissue inflammation." Lowery's initial impressions were signs and symptoms consistent with de Quervain's with inflammation of superficial branch of radial nerve. On April 11, Lowery noted that Bradshaw demonstrated signs and symptoms of right wrist tendinitis and early signs of carpal-tunnel syndrome.

Bradshaw was seen by Dr. Timothy Spires on April 18, 2002, for an evaluation of his right thumb and wrist. Dr. Spires noted that Bradshaw told him that the swelling had diminished with physical therapy, but that there was still discomfort. Dr. Spires found full range of motion in the right wrist, with tenderness in the first dorsal compartment, and good range of motion for all digits. He found positive Finkelstein's and negative Tinel's at

the carpal tunnel. His impression was tendinitis in the right wrist. Dr. Spires gave Bradshaw injections and placed him in a thumb spica gauntlet. He stated that the duration of the symptoms was unrealistic and he expected Bradshaw to return to work very soon.

On May 16, 2002, Dr. Spires noted that Bradshaw's thumb was fifty percent improved, although there was still some night pain and tenderness over the right first dorsal compartment. He noted mild discomfort with Finkelstein's and weakness of grip, although Bradshaw was neurologically intact. His impression was right de Quervain's much improved, and he continued the thumb splint. On June 27, 2002, Dr. Spires noted recurrence of discomfort if pressure was put on the hand; right-wrist tenderness in the first dorsal compartment; positive Finkelstein's; and "neurovascularly intact." He repeated injections and continued use of the splint. On August 1, 2002, Dr. Spires noted a seventy-percent improvement post injection, with problems only when Bradshaw did something "heavy." He noted tenderness in the first dorsal compartment, negative Finkelstein's, and much improved de Quervain's.

In a letter dated March 10, 2006, Dr. Spires stated that it was his opinion that Bradshaw's de Quervain's syndrome was due to repetitive trauma from his work at Georgia-Pacific in October 2001, based upon subjective history and objective findings of tenderness in the first dorsal compartment and positive Finkelstein's of the right wrist, and that his opinion was based upon a reasonable degree of medical certainty. However, Dr. Spires also noted that he did not believe that the problems he addressed were related to

carpal-tunnel syndrome and he would not attribute carpal-tunnel syndrome to Bradshaw's Georgia-Pacific repetitive injury.

Bradshaw was seen by Dr. Shailesh Vora on July 28, 2005, at which time an EMG/NCV study was performed that was determined to be abnormal. As a result of that study, Dr. Vora diagnosed right-side carpal-tunnel syndrome; right median motor sensory distal neuropathy; right ulnar sensory distal neuropathy; and right ulnar and radial motor proximal response absent. Dr. Vora recommended avoiding repetitive movement of the right hand, as well as an orthopedic referral for release of right-side carpal-tunnel syndrome.

Bradshaw was seen on February 9, 2006, by Dr. Michael Moore, an orthopedic physician specializing in the hand and upper extremities, for an independent medical evaluation. During this examination, Dr. Moore found no evidence of swelling, inflammation, erythema, or edema in the hand, wrist, or forearm. Among other things, Dr. Moore found negative Tinel's, equivocal Phalen's, and positive Finkelstein's. It was Dr. Moore's opinion that Bradshaw's clinical history and physical examination were most consistent with a right de Quervain's syndrome, consistent with his initial complaints from his work at Georgia-Pacific. Dr. Moore stated that if Bradshaw was his patient, he would recommend that Dr. Reginald Rutherford perform a repeat nerve conduction and EMG study of the right hand and arm; if the study was unremarkable, it would be his opinion that Bradshaw did not have any objective evidence of carpal-tunnel syndrome. Even if Bradshaw did have carpal-tunnel syndrome, Dr. Moore could not relate it to Bradshaw's

work activities at Georgia-Pacific, based upon the medical records of Dr. Spires and the fact that Bradshaw did not report symptoms consistent with carpal-tunnel syndrome. Dr. Moore said that all of his statements were made within a reasonable degree of medical certainty.

Dr. Moore was deposed on May 11, 2006. In this deposition, Dr. Moore stated that a tender wrist, which was noted in one of Dr. Webb's medical notes, was a subjective symptom. In reviewing Dr. Spires's medical notes, Dr. Moore said that a positive Finkelstein's test, a test for de Quervain's syndrome, was not an objective test because it could come under the voluntary control of the patient, and, again, a finding of tenderness was likewise subjective. Dr. Moore agreed that Dr. Spires's finding of weakness of grip, although an objective finding because it was an actual number relating to grip strength, was still subjective because the patient controlled his grip strength. Dr. Moore also noted that de Quervain's syndrome, while typically caused by overuse of the upper extremity, could also be associated with trauma, work activities, or "just living life." Dr. Moore noted that while tenderness in the first dorsal compartment and a positive Finkelstein's were not objective in terms of something like an X-ray, they were part of a physical examination performed to elicit a diagnosis; however, he admitted that the complaints could be controlled by a patient. Dr. Moore admitted that all of the findings and tests in Bradshaw's specific history appeared to be subjective in nature and were based upon factors that could come under the voluntary control of the patient. He also admitted that in his IME of Bradshaw, he did not find swelling, inflammation, erythema or edema in the

hand, wrist, or forearm, and that his findings of equivocal Phalen's and positive Finkelstein's did not constitute objective findings or objective tests. Dr. Moore further reiterated that although he believed Bradshaw suffered from right de Quervain's syndrome as a result of the subjective tests performed upon Bradshaw, he did not think that Bradshaw's symptoms were entirely consistent with carpal-tunnel syndrome, and that even if Bradshaw had carpal-tunnel syndrome, he could not relate that condition to Bradshaw's work activities at Georgia-Pacific.

Compensability of Injury

A compensable injury for purposes of this appeal is defined as

An injury causing internal or external physical harm to the body and arising out of and in the course of employment if it is not caused by a specific incident or is not identifiable by time and place of occurrence, if the injury is caused by rapid and repetitive motion. Carpal tunnel syndrome is specifically categorized as a compensable injury falling within this definition.

Ark. Code Ann. § 11-9-102(4)(A)(ii)(a) (Repl. 2002). The burden of proof of a compensable injury is on the employee, and for injuries falling within this section, the burden of proof is by a preponderance of the evidence, and the condition is compensable only if the alleged compensable injury is the major cause of the disability or need for treatment. Ark. Code Ann. § 11-9-102(4)(E)(ii) (Repl. 2002). A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Repl. 2002). Objective findings are those findings that cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i) (Repl. 2002).

Appellants' first argument is that the Commission's determination that Bradshaw sustained a compensable injury is not supported by substantial evidence. Specifically, appellants argue that Bradshaw failed to establish that his injury arose out of and in the course of his employment with Georgia-Pacific; that there are no objective findings in the record to establish a compensable wrist injury; and that Bradshaw failed to establish that his employment required rapid and repetitive motion.

a. Injury Arose out of and in the Course of Employment

Under this subpoint, appellants argue that Bradshaw's "credibility regarding the cause of his wrist complaints is suspect, and should be given little, if any, weight." Appellants point to the fact that Bradshaw's personnel file did not contain a notation that he had reported his alleged wrist discomfort to his supervisor, David McKey, and that McKey had testified that had Bradshaw reported such an injury to him, he would have noted it in Bradshaw's file. Appellants also point to McKey's testimony that Bradshaw told him that he had sustained a wrist injury while repairing his wife's car on October 4, 2001, and that personnel records indicate that Bradshaw was late to work that day because his wife's car had broken down.

The short answer to appellants' argument is that it is the Commission's province, not this court's, to determine witness credibility and the weight to be given to each witness's testimony. *Johnson v. Riceland Foods, supra*. In this case, the Commission specifically found that McKey's testimony was entitled to little weight, and instead gave

more credence to Bradshaw's testimony in determining that his wrist injury arose out of and in the course of his employment with Georgia-Pacific.

b. Objective Findings

Appellants contend under this subpoint that there is no compensable injury because there is no medical evidence supported by objective findings to establish Bradshaw's wrist injury. While it is true that none of the doctors who diagnosed Bradshaw with de Quervain's syndrome documented any objective findings, basing their diagnoses on subjective symptoms and testing, the physical therapist, Craig Lowery, to whom Bradshaw was referred by Dr. Webb, observed inflammation of Bradshaw's right hand and forearm, as well as inflammation of right brachioradialis, extensor carpi radialis longus, and supinator on March 4, 2002. Appellants argue that Lowery is a physical therapist, not a licensed physician, and that his "misplaced diagnosis" cannot support the existence of a compensable injury, contending that Lowery's note of inflammation of right brachioradialis, extensor carpi radialis longus, and supinator, which is musculature closer to the elbow, cannot support Lowery's diagnosis of de Quervain's syndrome. Initially, to the extent that appellants argue that Lowery, as a physical therapist, cannot make objective findings, our supreme court, in *Continental Express, Inc. v. Freeman*, 339 Ark. 142, 4 S.W.3d 124 (1999), held that nothing in the definition of objective findings "requires such medical evidence to come in the form of a medical opinion stated within a reasonable degree of medical certainty." 339 Ark. at 147, 4 S.W.3d at 127. In that case, the supreme court held that a physical therapist's notation of muscle spasms constituted objective findings; therefore, a

physical therapist's observations can certainly constitute objective findings. In this case, we hold that Lowery's observations of inflammation in Bradshaw's right hand and forearm constitute objective findings with regard to his de Quervain's syndrome.

Appellants also argue that there were no objective findings for carpal-tunnel syndrome, relying on the fact that the EMG/NCV study performed by Dr. Vora, which was determined to be abnormal, was performed three years after Bradshaw's last visit with Dr. Spires, and that it was Dr. Moore's and Dr. Spires's opinion that there was no objective evidence that Bradshaw had carpal-tunnel syndrome. First of all, the results of the EMG/NCV were objective findings. Furthermore, appellants' argument ignores the fact that Dr. Vora recommended an orthopaedic referral for carpal-tunnel syndrome, and that physical therapist Craig Lowery noted that Bradshaw demonstrated right wrist tendinitis with early signs of carpal-tunnel syndrome. When the Commission weighs medical evidence and the evidence is conflicting, its resolution is a question of fact for the Commission. *Cedar Chem. Co. v. Knight*, 99 Ark. App. 162, ___ S.W.3d ___ (2007) (*substituted opinion on denial of rehearing*), *aff'd Cedar Chem. Co. v. Knight*, ___ Ark. ___, ___ S.W.3d ___ (Jan. 31, 2008).

c. Rapid and Repetitive Motion

Appellants also argue that Bradshaw's work did not constitute rapid repetitive motion. They base this argument on McKey's testimony that an offbearer only pulled wood about fifty percent of the time because the other time wood was being automatically

stacked, the fact that Bradshaw had only worked for Georgia-Pacific for a few months, and because Bradshaw had been employed in labor-intensive jobs in the past.

Our supreme court has determined that in order for work to be rapid and repetitive, it must meet a two-prong test: (1) the tasks must be repetitive, and (2) the repetitive motion must be rapid. *Malone v. Texarkana Pub. Schs.*, 333 Ark. 343, 969 S.W.2d 644 (1998). In this case, Bradshaw testified that the wood was coming down the belt “super fast,” and that he had to pull it off and load it into a buggy. He testified that he worked ten to eleven hours per day, that he filled five to seven buggies with wood per day by himself, and that each filled buggy weighed between two and three thousand pounds. The Commission found that this constituted rapid, repetitive motion, and we hold that substantial evidence supports this finding. Although McKey testified differently, the Commission explicitly found that his testimony was entitled to little weight.

Medical Expenses and Temporary Total Disability Benefits

Appellants also argue that even if Bradshaw suffered a compensable injury, substantial evidence does not support an award of temporary-total disability benefits. The Commission awarded Bradshaw temporary-total disability benefits from October 2001 to a date yet to be determined. In doing so, the Commission determined that Bradshaw remained in his healing period, pointing to the fact that all of his doctors agreed that he suffers from de Quervain’s syndrome, that it was Dr. Moore’s opinion in 2006 that the de Quervain’s was attributable to Bradshaw’s work for Georgia-Pacific, and that Dr. Spires recommended in 2006 that Bradshaw undergo surgery because the symptoms had not

resolved. Furthermore, with regard to carpal-tunnel syndrome, Dr. Moore had also requested additional testing for this problem.

It is not necessary for a claimant with a scheduled injury to prove that he is totally incapacitated from earning wages in order to collect temporary total disability benefits; rather, he is entitled to temporary-total disability benefits during his healing period or until he returns to work, whichever occurs first. *Fendley v. Pea Ridge Sch. Dist.*, 97 Ark. App. 214, 245 S.W.3d 676 (2006). The healing period is defined as that period for the healing of an injury that continues until the underlying condition causing the disability has become stable and nothing in the way of treatment will improve the condition. *Farmers Coop. v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002). The healing period has not ended so long as the treatment is administered for healing and alleviation of the condition and continues until the employee is as far restored as the permanent character of the injury will permit. *Arkansas Highway and Transp. Dep't v. McWilliams*, 41 Ark. App. 1, 846 S.W.2d 670 (1993). The determination of the end of the healing period is a factual determination for the Commission. *Harvest Foods v. Washam*, 52 Ark. App. 72, 914 S.W.2d 776 (1996).

In this case, appellants argue that Bradshaw is not still in his healing period and has returned to work. However, the Commission determined that Bradshaw's condition had not stabilized, basing that finding on Dr. Moore's 2006 opinion that Bradshaw was suffering from de Quervain's attributable to his work at Georgia-Pacific and Dr. Spires's 2006 recommendation that Bradshaw undergo surgery because his symptoms had not resolved. Furthermore, Dr. Moore has requested additional testing for carpal-tunnel

syndrome. We hold that these findings indicate that Bradshaw remained in his healing period. Furthermore, Bradshaw's failed attempts to return to work do not constitute a return to work. *See Farmers Coop., supra.*

Affirmed.

PITTMAN, C.J., and BIRD, J., agree.