

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

DIVISION II

CA07-1197

June 18, 2008

DAVID BELIEW

APPELLANT

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION [F510342]

V.

LENNOX INDUSTRIES & ACE  
AMERICAN INSURANCE

APPELLEES

REVERSED AND REMANDED

In this workers' compensation case, the parties stipulated that appellant, David Beliew, suffered a compensable back injury on July 20, 2005. Appellees, Lennox Industries and Ace American Insurance, paid for treatment to the thoracic area of Beliew's back, but refused to pay any further benefits after two doctors found that Beliew had reached maximum-medical improvement (MMI) and he was released to return to work with a zero-percent impairment rating.

Beliew contended that he remained symptomatic and wanted to continue treatment with Dr. Harold Chakales, who had begun treating him for lumbar problems; he also sought temporary-total disability benefits from February 12, 2006, to a date yet to be determined. The administrative law judge determined that Beliew proved by a

preponderance of the evidence that Dr. Chakales's treatment was reasonable and necessary, as well as causally related to his compensable injury. The ALJ also determined that Beliew remained in his healing period and was entitled to temporary-total disability benefits from February 12, 2006, to a date yet to be determined.

The Commission reversed the ALJ's decision, finding that there was no evidence in the record demonstrating that Beliew's July 20, 2005 compensable injury was the cause of the lumbar problems diagnosed by Dr. Chakales or that surgical treatment recommended by Dr. Chakales was reasonably necessary in connection with the July 20, 2005 injury. Beliew now appeals, arguing that the Commission erred in finding that he failed to prove that his low-back injury was compensable and that Dr. Chakales's treatment and recommended surgery was not reasonable and necessary treatment in connection with his compensable injury. Beliew also argues that he is entitled to temporary total disability from February 12, 2006, to a date yet to be determined. We reverse and remand this case to the Commission for further findings because it failed to discuss the findings of the doctors who first examined Beliew and noted the presence of low-back pain.

#### *Standard of Review*

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).

In *Fayetteville School District v. Kunzelman*, 93 Ark. App. 160, 164-65, 217 S.W.3d 149, 153 (2005) (citations omitted), this court held:

Workers' compensation law provides that an employer shall provide the medical services that are reasonably necessary in connection with the injury received by the employee. The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. It is the province of the Commission to weigh conflicting medical evidence; however, the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. The resolution of conflicting evidence is a question of fact for the Commission. We defer to the Commission's findings on what testimony it deems to be credible, and it is within the Commission's province to reconcile conflicting evidence and to determine the true facts.

#### *Hearing Testimony*

Beliew testified at the hearing before the ALJ that he was thirty-eight years old, that he had worked at Lennox since February 1994, and that he had perfect attendance for four years until the end of 2004. He said that prior to July 2005 he had no back problems; at the end of 2004 he had an accident at work where he was knocked under an air-conditioning unit by a forklift carrying pallets that fell on him, but he was seen by the company nurse, did not go to the doctor, and returned to work on the floor that day.

Beliew explained that in early July 2005, he was pushing and steering a cart holding an air-conditioning unit when he felt something pull in his lower back, coupled with a

burning sensation. He told his supervisor, Charles Kirksey, that he needed to see a doctor, and he went to see a Dr. Hawkins on his own accord. He said that the pain persisted, and that he told his supervisor that he needed to see the nurse; he completed an accident report sheet on July 20. Beliew explained that he was having pain from his mid-to-lower back and in his left leg from his knee up to his thigh, and that the pain had never gone away. He said that when he was seen by Dr. Brent Sprinkle, he told Dr. Sprinkle that he had pain from his mid-shoulder down to his lower back and in his left leg, and he denied getting any relief from Dr. Sprinkle's treatment. He testified that he was now under Dr. Chakales's care, and that he was having some relief from that treatment. He admitted that he had not worked anywhere since December 2005, stating that he could not work because of his back pain; he also stated that he had gotten a certified letter from Lennox around September 17, 2005, stating that he was no longer employed.

On cross-examination, Beliew admitted that he had not indicated anything about the December 2004 injury in his answers to interrogatories. He said that when he injured himself in July 2005, he began feeling pain in his back and went to the company nurse, Kim Chastain, told her what type of problem he was having, told her that he needed to see a doctor, and completed some paperwork. He did not recall whether he told Chastain that he had been to the doctor on July 8, 2005, with complaints. He said that Chastain sent him to Dr. Noble Daniel at Stuttgart Regional Medical Center, and that in October 2005, he began to see Dr. Sprinkle, who x-rayed his back. He said that he noted for Dr. Sprinkle that he was having pain in his "mid-back, left side, sometimes left leg." He did

not recall indicating on a pain drawing where he was having pain. Beliew recounted that Dr. Sprinkle prescribed medication; performed a bone scan, x-rays, and a partial MRI of his mid-back; gave him one injection, after which he declined to have further injections; and also prescribed physical-therapy work hardening for him. Beliew said that at the work hardening, he marked that the pain was in the middle part of his back on the left side and in his left leg, and that the pain was of the throbbing nature. Beliew did not recall when Dr. Sprinkle released him to work, but he thought it might have been sometime in December 2005. He said that he asked for a second opinion; that he was seen by Dr. Annette Meador on February 9, 2006; and that Dr. Meador released him to return to full duty. He began seeing Dr. Chakales on February 27, 2006. Beliew said that he did not return to work after Dr. Meador released him to full duty, but instead drew short-term disability from February 17, 2006, until August 17, 2006, and was then terminated by Lennox.

On redirect examination, Beliew said that the July 20, 2005 form from Lennox listed "low-back strain" under subjective findings, and that that form was completed before he ever saw Dr. Sprinkle. Beliew said that Dr. Sprinkle did not provide treatment for his low back, that Dr. Sprinkle concentrated on his mid-back. Beliew stated that he did not get relief from Dr. Sprinkle's treatments, and that his condition was the same at the hearing as it was in July 2005. Beliew also said that Dr. Hord's typed notes from July 20, 2005, stated that he was having mid-to-lower-back pain.

Cheryl Johnson, a nurse case manager for Lennox, testified that Beliew was already undergoing treatment when she came into the case. She said that Beliew described the pain as being similar to someone sticking their foot in his back, and that he visually pointed to his lower thoracic spine. Johnson denied that Beliew mentioned anything about any lower back pain that was in his belt line or below it. Johnson said that she was unable to identify any cause for Beliew's pain, even though he had been through many diagnostic tests and the diagnosis was a thoracic strain. Johnson said that based upon the severity of Beliew's symptoms and complaints, she recommended a second opinion. Beliew was then seen by Dr. Meador, who reported that Beliew's neurological exam was normal, there were no spasms, and that there was nothing objective to relate to his pain.

On cross-examination, Johnson admitted that left-leg pain could be indicative of a lumbar injury; however, her understanding was that Beliew never complained of lumbar problems. Johnson said that it was her understanding that Dr. Sprinkle never looked at the lumbar area because Beliew's symptoms did not correlate with that level.

On redirect, Johnson said that Dr. Sprinkle's notes from the first visit indicated that there was full range of motion in the lumbar spine, and that if there was a problem with the lumbar spine, it would be painful to go through a full range of motion.

Kim Chastain, an industrial nurse at Lennox, testified that on July 20, 2005, Beliew came to her office to report an injury, and that she listed mid-back as the location where Beliew told her that he was having pain. She said that she sent Beliew to Dr. Daniel, the company doctor, but that Beliew was seen by Dr. Mario Hord. Chastain said that on the

form she sent with Beliew to the doctor, Dr. Hord had written “low-back strain” under objective findings and “low-back pain” under subjective findings. Chastain said that Beliew never indicated that he had low-back pain. Chastain said that she did not have any type of medical documentation of a back injury in December 2004, and that there was nothing else related to any kind of back complaints or problems before July 20, 2005.

On cross-examination, Chastain testified that she had no reason to dispute Beliew’s assertion that he had no back problems prior to July 2005 or that he had perfect attendance for four years until that time. She said that she assumed that Beliew told her that his mid-back was hurting since she wrote “mid-back pain.” She said that when Beliew returned the form from Dr. Hord, she noticed that it was a strain, but that she did not look that he had written “low” with the back-strain diagnosis. Chastain said that she did not know why Dr. Sprinkle was only treating Beliew’s mid-back, and she did not have any reason to think that Beliew did not injure his back at work.

Kathy Keary, a senior claims representative for EASIS, who handles workers’ compensation claims for Lennox, testified by deposition that it was consistent with her records that Beliew suffered an injury on July 20, 2005, which was treated at the Stuttgart Medical Clinic for a period of time. When Keary noticed that Beliew was losing time from work, she interviewed him about his injury. She stated that Beliew told her that he was pushing a thirty-ton unit when he felt something in the left side of his upper back that felt like someone had a foot pressing into his back. Keary said that Beliew made no mention of his lower back, although he related to her his December 2004 accident. She

said that it was consistent with her records that Beliew began seeing Dr. Sprinkle in October 2005, and that Dr. Daniels had arranged the appointment. Keary said that Beliew never reported to her that he felt that his lower back was injured in the July 2005 accident.

On cross-examination, Keary stated that it would surprise her if there was a Lennox form dated July 20 that said Beliew had low-back pain; that the form sent to her initially stated mid-back pain; and that she did not have a form dated July 20, 2005 that indicated low-back pain in her file.

Dr. Brent Sprinkle testified by deposition that Beliew complained of pain in his mid-back that was worse on the left side, and that on occasion, he had some pain in his left leg, but that the mid-back was his greatest concern. Dr. Sprinkle said that Beliew reported that it felt like he had a foot in the middle of his back pushing against his lung. Dr. Sprinkle said that he focused his efforts on the thoracic spine, and that the location where Beliew described his pain was consistent with the information he provided on the questionnaire as being in the mid- or thoracic-spine area. Dr. Sprinkle said that when he examined Beliew, there was tenderness in the rhomboids, a muscle group to the left of the left side of the spine in the mid-spine area. Although Dr. Sprinkle admitted that Beliew had a “little bit” of tenderness in his lower back, he said that the more pressing problem was the tenderness on the left side of the spine in the mid-back. Dr. Sprinkle said that his initial diagnosis was a thoracic strain with thoracic myofascial-pain syndrome, which was essentially a strain. Dr. Sprinkle ordered an MRI of the thoracic spine, which was



performed on October 10, 2005; there was a small disc herniation and minimal arthritic changes at the T11-12 level, the very bottom part of the thoracic spine, and a small hemangioma at T-8. He said that the MRI findings with the history given by Beliew did not correlate very well because the T11-12 level was fairly low in the back, just a little above the waistline, and Beliew's pain was higher up, near the shoulder blade. He said that he thought the degenerative changes at T11-12 were probably present prior to Beliew's injury. Dr. Sprinkle said that Beliew's complaints of pain were still associated with his mid-back or thoracic spine; however, Dr. Sprinkle explained that when he said lumbar spine, he "lumped thoracic and lumbar together conceptually."

Dr. Sprinkle said that he found that Beliew was at MMI and released him with a zero-percent impairment rating. He said that he had tried the standard accepted treatment for a strain injury and, unfortunately, Beliew had failed to respond to that, so in his opinion, he had exhausted the non-operative measures to try to make Beliew better. He said that in an abundance of caution, he ordered a bone scan to make sure that the hemangioma was not contributing to Beliew's symptoms; that test was negative, and he again released Beliew at MMI with no impairment.

Dr. Sprinkle said that Dr. Meador had noted pain in the right shoulder blade and into the right side of Beliew's back since his accident; that her diagnosis was myofascial-thoracic pain, which was essentially the same diagnosis as he had given; and that Dr. Meador noted that Beliew had some serious emotional and anger problems. Dr. Sprinkle noted that Dr. Meador's findings and recommendations were consistent with his

recommendations. He had not reviewed Dr. Chakales's reports, but he noted that the history recounted by Dr. Chakales was different than the history Beliew had given him with regard to the location of the pain in that he was describing more of a low-back and leg pain. Dr. Sprinkle also said that Beliew described a different injury, the December 2004 injury where the pallets fell on him.

Dr. Sprinkle noted that Dr. Chakales had recommended an MRI of the lumbar spine, and that test had shown degenerative-disc-disease changes at L4-5 with a tear in the disc and a broad-based bulge, with no real focal extrusion. He said that the MRI report of the lumbar spine was basically consistent with someone who had degenerative-disc disease in their thoracic and lumbar spine. Dr. Sprinkle could not state with medical certainty when the annular tear had occurred, and he noted that the tear was in a different area than the pain Beliew reported to him, stating that L4-5 was almost down to the tailbone area. He said that it was not known when the annular tear occurred, but he did not believe that it was related to the injury from 2005.

On cross-examination, Dr. Sprinkle admitted that the accident form said "mid-to low-back pain," but he said that he did not have an authorization for treatment form dated July 20, 2005, from Lennox that said "low-back strain" and "low-back pain." He said that if he had a report that stated Beliew had an incident and then complained of low-back pain, he would consider that the pain originated in the lumbar spine, but he saw nothing in his file that indicated low-back or lumbar pain. He said that there was nothing in his file that emphasized anything about the low back, although he admitted that the

report had mentioned a low-back strain. He stated that if he had seen the initial report of injury that said lumbar strain/low-back pain he probably would not have focused more on the lumbar spine rather than the thoracic area because he focused more on where the patient told him the pain was located. Sprinkle admitted that he did not treat Beliew for any lumbar injury.

#### *Medical Evidence*

On the form authorizing treatment from Lennox, dated July 20, 2005, the description of injury was “back pain,” with objective findings stating “low-back strain” and subjective findings stating “low-back pain.” The physician diagnosis was “lumbar strain.” On that same date, Dr. Hord at the Stuttgart Regional Clinic Network noted that Beliew was having mid-to-low-back pain, as well as a distinct muscle spasm in his left paraspinous muscles in his lumbar spine area.

On September 19, 2005, Beliew returned to the Stuttgart Regional Clinic Network and was seen by Dr. Daniel, who noted back pain that radiated to Beliew’s left leg. Dr. Daniel also noted that the discomfort was generally at the T9-L2 level. On September 22, Dr. Daniel noted that there was still pain in the left paracentral area, although there was no defined spasm.

Beliew was sent to physical therapy on September 26. On the information survey he reported upper left back pain and pain sometimes in his left leg, with a constant pain of nine on a scale of one to ten.

Beliew was then referred to Dr. Sprinkle. On the initial October 3, 2005 history survey, Beliew stated that he had pain in his mid-back, left side, and sometimes in his left leg. He explained that he was pushing a unit when he felt something in his back pull or give and it felt like someone had their feet in his back pushing against his lungs. In the pain drawing, Beliew indicated that there was pain in his mid-back and left leg. In the initial evaluation, Dr. Sprinkle noted that there was thoracic pain and intermittent left thigh pain that was not currently present; that there was a full range of motion in the lumbar spine, although there were also lumbar paraspinal trigger points; and that there was full range of motion in the cervical spine with tenderness in the rhomboids. X-rays of the cervical and lumbar spine were normal. Dr. Sprinkle diagnosed thoracic strain and thoracic myofascial-pain syndrome. The plan of treatment included an MRI of the thoracic spine to make sure there were no disc herniations. The MRI of the thoracic spine, performed October 10, 2005, indicated mild degenerative changes at T11-12, but no focal disc herniation or significant canal stenosis. On his October 10 notes, Dr. Sprinkle stated that there was tenderness in the left lumbar paraspinals, and the impression was still thoracic somatic dysfunction and thoracic pain; he placed work restrictions on Beliew of no pushing or pulling of more than 100 pounds and no lifting of more than fifty pounds. On November 2, 2005, Dr. Sprinkle found that Beliew was at MMI with a zero-percent impairment rating. He continued current work restrictions, with the limitations being increased ten pounds per week.

Dr. Sprinkle's notes reflect that he saw Beliew again on December 15, 2005, at which time his diagnosis was thoracic degenerative-disc disease, thoracic myofacial-pain syndrome, and thoracic strain. Dr. Sprinkle further noted that the only other treatment option was an epidural steroid injection at T11-12 because that was where the most degenerative changes were located. Beliew was limited to no lifting over thirty-five pounds and no pushing or pulling over fifty pounds, with those restrictions being increased by ten pounds per week. In his notes, Dr. Sprinkle indicated that if the epidural was helpful, Beliew could have two more; otherwise, he was at MMI with zero-percent impairment. On January 5, 2006, Sprinkle recommended a bone scan to rule out that the hemangioma at T8 was symptomatic and causing Beliew problems; the bone scan showed no abnormality.

On February 9, 2006, Beliew saw Dr. Meador for a second opinion. On the pain drawing, Beliew indicated pain from his left shoulder blade all the way down to his waist, as well as pain in his left leg. Dr. Meador's records show her impression was myofacial posterior thoracic pain with minimal physical exam findings, out of proportion to the level of pain reported. Dr. Meador indicated in her records that Beliew had serious emotional and anger problems because when she performed the straight-leg raise, he acted as if she was trying to hurt him, *i.e.*, she asked him at whom he was mad, and he said that he was angry that no one had been able to figure out what caused his pain, and she sent him back to work full duty on February 10 with zero-percent impairment.

Beliew began seeing Dr. Harold Chakales February 27, 2006. Dr. Chakales's diagnosis was lumbar disc syndrome with left-sided sciatica, and it was his written opinion that Beliew was temporarily totally disabled. Dr. Chakales noted that Beliew had had an MRI of his thoracic spine but not his lumbar spine, which he scheduled. Dr. Chakales also scheduled Beliew for an EMG/NCV. The MRI of the lumbar spine noted a history of low back pain and left leg pain and indicated that there was a moderate sized annular tear in the disc at L4-5, with a broad based bulge. The EMG was abnormal due to "chronic denervation changes at the left S1 (plus or minus left L5) level. This suggests possible chronic left S1 radiculopathy and possible left L5 radiculopathy." In a follow up report, Dr. Chakales noted that Beliew was symptomatic in his back, and he noted the abnormal MRI that showed a moderate-sized tear of the annulus with a bulging disc at L4-5, with some evidence of abnormality at L5-S1. He also noted that the EMG/NCV was abnormal at L4-5, L5-S1. On April 24, 2006, Dr. Chakales noted that Beliew was still having quite a bit of back pain; that he remained disabled and unable to work; and that he was having a discogram in ten days. On May 12, Dr. Chakales noted that the discogram was abnormal at L3-4, and he felt that there were changes at L4-5 and L5-S1. Dr. Chakales stated that there was lumbar disc syndrome at two levels, as well as abnormal EMG studies. He opined that if Beliew was still having trouble, fusion might be considered or he could be treated nonoperatively, and he still was of the opinion that Beliew was unable to work.

#### *Analysis*

In denying Beliew's claim, the Commission relied solely on Drs. Sprinkle's and Meador's opinions, finding that Dr. Chakales's opinion was not entitled to much weight. There was no mention of the findings of low-back strain made by Drs. Hord and Daniel prior to Beliew being seen by Drs. Sprinkle and Meador. In *Kimbell v. Association of Rehab Industry*, 366 Ark. 297, 304, 235 S.W.3d 499, 504-05 (2006) (citations omitted), our supreme court held, "Appellate courts defer to the Commission on issues involving the weight of evidence and the credibility of witnesses. However, while the Commission may be insulated to a certain degree, it is not so insulated to render appellate review meaningless. Likewise, the Commission may not arbitrarily disregard evidence in support of a claim."

In this case, we hold that the Commission, in relying only on the medical opinions of Drs. Sprinkle and Meador, arbitrarily disregarded the medical records from Drs. Hord and Daniel that diagnosed Beliew with low-back strain prior to Beliew being seen by Dr. Sprinkle. Kim Chastain, the industrial nurse, testified that she only noticed that Beliew was diagnosed with back strain, not low-back strain. These medical records were not sent to Kathy Keary, the workers' compensation claims manager, as she testified that she had no forms indicating that Beliew was complaining of low-back pain. Likewise, Dr. Sprinkle testified that he had no form that indicated that Beliew had complained of low-back pain in connection with his injury. Furthermore, as Cheryl Johnson, the nurse case manager testified, left leg pain could be indicative of a lumbar injury; however, although

Sprinkle had this information, he only chose to look at the thoracic spine, not the lumbar spine as well.

Despite complaints of low-back pain indicated in the medical records, which were disregarded by the Commission, neither Dr. Sprinkle nor Dr. Meador ordered an MRI of the lumbar spine. The information regarding low-back pain was contained in Beliew's medical records since his first visit to the doctor on July 20, 2005; however, the Commission disregarded these records in arriving at its decision, and this was improper. We reverse and remand this case to the Commission for further findings, taking into consideration the above recited testimony. Because we are reversing and remanding for the Commission to make further findings regarding whether Dr. Chakales's treatment of Beliew's lumbar back is reasonable and necessary, we do not address whether Beliew is entitled to temporary total disability; however, the Commission is ordered to consider this issue if it determines on remand that Beliew's treatment by Dr. Chakales is reasonable and necessary for his compensable injury.

Reversed and remanded.

GRIFFEN and HEFFLEY, JJ., agree.