

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
BRIAN S. MILLER, JUDGE

DIVISION II

CA07-211

December 19, 2007

ROGER WILLIAMS
APPELLANT

AN APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[F501842]

v.

CROCKETT BUSINESS MACHINES
APPELLEE

REVERSED

Appellant Roger Williams appeals from the January 8, 2007, opinion of the Arkansas Workers' Compensation Commission finding that he failed to prove that he sustained a compensable injury. Williams argues that: (1) the Commission impermissibly ignored all of the credible evidence when it found that he did not sustain an injury identifiable by time and place of occurrence; (2) the Commission relied on material misstatements of the evidence when it found that he did not sustain an aggravation of a preexisting injury; and (3) the Commission contradicted all known law in finding that there were no objective medical findings supporting his claim. We agree with Williams and reverse.

I. Background

Williams has a history of back pain, which began before he was employed by Crockett Business Machines in 1998. In 2000, Williams was given a physical examination and found to be in good shape with no abnormalities. He, however, suffered a compensable back injury in 2002 while un-boxing a machine. An MRI taken on March 8, 2002, showed that he had mild degenerative disc disease with (1) posterior protrusion of disc material; (2) diffusely bulging annulus at L3-L4; (3) left paracentral disc herniation at L4-L5; and right paracentral disc herniation at L5-S1. He was originally given conservative treatment, but his pain persisted. Several surgical procedures were performed on Williams on March 11, 2003, including lumbar laminectomy, facetectomy and nerve root decompression. Following surgery, Williams continued to complain of pain in his lower back; however, all of his physical examinations and x-rays were negative. He was ultimately released to return to work with no restrictions.

Williams was injured again on February 10, 2005, while helping one of Crockett's other employees move a 200-pound machine. He filed a claim for workers' compensation benefits, which was denied by the Administrative Law Judge (ALJ). After a hearing, the ALJ found that Williams failed to prove that he suffered a compensable injury on February 10, 2005, because any pain he felt was merely a continuation of his 2002 injury. The ALJ further held that there were no objective medical findings showing that Williams suffered an injury on February 10, 2005. On appeal to the Commission, the ALJ's findings were adopted, and its decision was affirmed. This appeal followed.

II. Standard of Review

We normally review only the decision of the Commission and not that of the ALJ. *Daniels v. Affiliated Foods S.W.*, 70 Ark. App. 319, 17 S.W.3d 817 (2000). In this case, the Commission affirmed and adopted the ALJ's opinion as its own, which it is permitted to do. *See Death & Permanent Total Disability Trust Fund v. Branum*, 82 Ark. App. 338, 107 S.W.3d 876 (2003). In so doing, the Commission made the ALJ's findings and conclusions the findings and conclusions of the Commission. *Id.* Therefore, for purposes of our review, we consider both the ALJ's order and the Commission's majority order. *Id.*

In reviewing the Commission's order, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's decision and affirm if that decision is supported by substantial evidence. *Smith v. City of Ft. Smith*, 84 Ark. App. 430, 143 S.W.3d 593 (2004). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Williams v. Prostaff Temps.*, 336 Ark. 510, 988 S.W.2d 1 (1999). The issue is not whether the reviewing court might have reached a different result from the Commission; if reasonable minds could reach the result found by the Commission, this court must affirm. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999). In conducting our review, we recognize that it is the function of the Commission to determine the credibility of witnesses and the weight to be given their testimony. *Wal-Mart Stores, Inc. v. Stotts*, 74 Ark. App. 428, 49 S.W.3d 667 (2001). The Commission has the duty of weighing medical evidence, and the resolution of conflicting evidence is a question of fact for the Commission. *Stone v. Dollar General Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005). While the Commission's findings on

these matters are insulated to a certain degree, its decisions are not so insulated as to render appellate review meaningless. *Lloyd v. United Parcel Service*, 69 Ark. App. 92, 9 S.W.3d 564 (2000).

III. Compensable Injury

A close review of the record reveals that the Commission erred in finding that Williams failed to prove he suffered a compensable injury on February 10, 2005. A compensable injury is an “accidental injury ... arising out of and in the course of employment.... An injury is ‘accidental’ only if it is caused by a specific incident and is identifiable by time and place of occurrence.” Ark. Code Ann. § 11-9-102(4). A compensable injury must be supported by objective medical findings not under the voluntary control of the claimant. Ark. Code Ann. § 11-9-102(4) and (16). The claimant has the burden of proving by a preponderance of the evidence that his injury is compensable. § 11-9-102(4).

The ALJ’s finding that Williams did not suffer a compensable injury was based on its determination that Williams and his witness, Mario Sherrell, were not credible. This determination was based on the ALJ’s view that Williams and Sherrell gave conflicting testimony and that Williams’s testimony conflicted with the statement he gave at the emergency room on the day of the accident. Indeed, the ALJ specifically held:

The only evidence offered by claimant to corroborate the on-the-job incident was the testimony of Mario Sherrell, a disgruntled employee of the company. Moreover, the claimant’s own version of the facts surrounding his alleged injury is not consistent with the description of the incident he gave to the emergency room personnel or with the version as described by Sherrell. Based on my review of the evidence in this case,

I do not find that the testimony of the claimant or Sherrell that the claimant was injured on the job to be credible or compelling.

It is the duty of the Commission, and in this case, the ALJ, to judge the credibility of the witnesses and in most cases, we would accept its credibility determinations. *Wal-Mart, supra*. However, the ALJ's finding that Williams's testimony conflicted with Sherrell's testimony and with the statement Williams gave at the emergency room is simply inaccurate.

Sherrell's testimony supported Williams's version of the events causing his February 10, 2005, injury. Williams testified that he was injured while helping Sherrell retrieve a 200-pound machine from a shelf. He stated that the machine was too heavy for him and that he stumbled, fell back, and was trapped against a rack by the machine. Williams further stated that he immediately knew that he was injured but that he helped Sherrell put the machine on a gurney. Within five to ten minutes, his muscles tightened and his body was drawn to one side.

Sherrell testified that Williams was helping him move a machine when Sherrell heard a pop. He said that Williams gave way and the machine slipped down toward the gurney. He stated that Williams then helped him put the machine back on the shelf and that Williams immediately began to show signs that he was hurting.

The record shows that Williams went to the emergency room on February 10, 2005, immediately following the incident with the 200-pound machine. The emergency room notes show that he told the emergency room nurse that a machine fell, hitting him on his left thigh,

and that he was feeling pain in his hip, radiating down his left leg. The emergency room doctor noticed “inflammation secondary to recent injury.”

Williams’s testimony does not conflict with Sherrell’s testimony and does not conflict with the statement he gave to the emergency room immediately following the accident. All of the evidence shows that Williams was helping Sherrell move a machine when the machine fell on him, immediately causing him to feel pain in his back. The fact that the witnesses did not read from a prepared script does not make the evidence inconsistent. Moreover, there is no evidence of record to support the ALJ’s statement that Sherrell was a “disgruntled” employee. For these reasons, we reverse the Commission on this point.

IV. Recurrence v. Aggravation

Williams argues that there was sufficient proof that the injury he suffered was an aggravation of his pre-existing injury, not a recurrence as found by the Commission. A recurrence is not a new injury but merely another period of incapacitation resulting from a previous injury. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000). A recurrence exists when the second complication is a natural and probable consequence of a prior injury. *Id.* An aggravation is a new injury resulting from an independent incident. *Id.* An aggravation, being a new injury with an independent cause, must meet the requirements for a compensable injury. *Id.*

The record shows that Williams suffered a new injury on February 10, 2005, which was separate and distinct from his March 2002 injury. The emergency room notes from February 10, 2005, show that Williams told the emergency room nurse that a machine fell

on him causing pain in his hip, radiating down his left leg, and that there was “inflammation secondary to recent injury.” An MRI was conducted on March 8, 2005, confirming all of the findings of the March 8, 2002 MRI, but which contained the additional finding of herniated nucleus pulposus with subligamentous extrusion inferiorly along the posterior body of L5.

Williams’s primary care physician, Jose Echeverria, M.D., found that Williams’s February 10, 2005, injury was different from the one he sustained in March 2002. He wrote that the most recent MRI revealed disc herniation accompanied by an “inferior subligamentous extrusion at the L4-L5 disc interspace.” Dr. Echeverria pointed out that the postoperative reports from Williams’s 2002 back surgery did not show subligamentous extrusion. Therefore, the subligamentous extrusion is a new and separate finding that was not shown until after Williams’s February 2005 accident.

Based on the medical evidence, reasonable minds could not have reached the Commission’s conclusion that Williams’s injury was a recurrence of his March 2002 injury. Therefore we reverse on this point.

V. Objective Findings of Injury

Williams finally asserts that the Commission erred in finding that there was no objective medical evidence that he suffered an injury. A compensable injury must be established by medical evidence supported by objective findings. *Crudup, supra*. Objective findings are those that cannot come under the voluntary control of the individual. Ark. Code Ann. § 11-9-102(16)(A)(i). Medical opinions addressing compensability must be stated

within a reasonable degree of medical certainty. Ark. Code Ann. § 11-9-102(16)(B); *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002). Speculation and conjecture cannot substitute for credible evidence. *Id.*

We agree that the Commission erred on this point. The March 2005 MRI, finding that Williams suffered a left paracentral disc protrusion or herniation with accompanying inferior subligamentous extrusion at the L4-5 disc interspace, is an objective finding. Williams cannot voluntarily control a subligamentous extrusion at the L4-L5 disc interspace. Moreover, there was substantial evidence that Williams's work-related accident on February 10, 2005, was the cause of the injury shown in the March 2005 MRI. Indeed, Dr. Echeverria linked the injury to the accident and both Williams and Sherrell linked the injury to the accident. Therefore, we reverse on this point and instruct the Commission to award the appropriate amount of benefits to Williams.

Reversed with instructions.

MARSHALL and VAUGHT, JJ., agree.