

ARKANSAS COURT OF APPEALS  
NOT DESIGNATED FOR PUBLICATION  
LARRY D. VAUGHT, JUDGE

DIVISION IV

CA07-453

November 14, 2007

JAMES MITCHELL

APPELLANT

V.

APPEAL FROM THE WORKERS'  
COMPENSATION COMMISSION  
[NO. F408480]

GEORGIA PACIFIC CORPORATION  
and SEDGWICK CLAIMS  
MANAGEMENT SERVICES

APPELLEES

AFFIRMED

Appellant James Mitchell appeals from the decision of the Arkansas Workers' Compensation Commission denying his claim for compensation. Mitchell argues that substantial evidence fails to support the Commission's decision. We affirm.

Mitchell is a twenty-year employee of appellee Georgia Pacific Corporation. Mitchell's job as a deck operator required him to be stationed at a control panel and monitor logs as they traveled down a conveyor belt and through a lathe, which stripped the bark from the log. On August 10, 2004, a log jam occurred, which caused a moveable catwalk to loosen and strike Mitchell in the back. Mitchell testified that the impact caused him to fall to the floor on his hands and knees. Mitchell returned to work after the incident but was unable to complete his shift due to pain. Before he left, he reported the incident to his supervisor. The

following day, Mitchell called the safety director at work to report the incident and to request medical treatment for pain in his back and neck.

On August 12, 2004, Mitchell received medical treatment from Dr. Edward A. Gresham, a physician selected by Georgia Pacific. Dr. Gresham reported that he observed no abrasions, no ecchymosis or swelling, and no muscle spasms. Dr. Gresham diagnosed Mitchell with a strain and released him to return to work. Later that same day, Mitchell sought medical treatment at the local emergency room. There, the physician diagnosed Mitchell with a low back contusion and acute thoracic and lumbar pain secondary to a direct blow to the back.

Mitchell continued to receive medical treatment for his complaints from another company physician, Dr. Benjamin Walsh. Dr. Walsh never identified any objective findings of an injury but did note symptom magnification. However, due to Mitchell's continued complaints, Dr. Walsh referred Mitchell to Dr. Gregg Massanelli, an orthopedic surgeon.

On September 28, 2004, Dr. Massanelli stated in his report that he observed no obvious spasm, but that Mitchell did have significant limitations in both active and passive range of motion in his cervical spine, which caused pain. Dr. Massanelli opined that Mitchell suffered from significant degenerative-disc disease and recommended an MRI. An MRI was performed on September 30, 2004, and confirmed degenerative-disc disease and also a small left paracentral herniation at the C4-5 level, along with stenosis at the C3-4, C4-5, and C5-6 levels. Dr. Massanelli opined on October 5, 2004, that the changes on the MRI were chronic

and not caused by any work-related injury; however, he concluded that an injury could have aggravated an arthritic neck.

Mitchell then sought medical treatment from another orthopedic surgeon, Dr. D'Orsay Bryant, III. On October 14, 2004, Dr. Bryant noted that Mitchell's "neck reveal[ed] tenderness and spasm." While Mitchell continued to see Dr. Bryant with complaints of neck pain through January 2005, records showed that Dr. Bryant primarily treated Mitchell for bilateral carpal-tunnel syndrome.

In February 2005, Mitchell was seen by Dr. Reza Shahim, a referral by Dr. Bryant. Dr. Shahim reviewed the September 2005 MRI, noted the herniation, and recommended another MRI due to the poor quality of the image. The second MRI, according to Dr. Shahim's February 24, 2005, report also demonstrated a "broad disc herniation at C4-5 which result[ed] in severe canal stenosis." Dr. Shahim recommended surgery, which was performed March 25, 2005. During surgery Dr. Shahim discovered "a large paramedian disc herniation in the epidural space causing significant thecal sac compression...." At the time of the hearing, Mitchell remained under the care of Dr. Shahim.

While the ALJ found that Mitchell proved that he was struck by the catwalk on August 10, 2004, the ALJ also found that Mitchell failed to prove that he suffered compensable injuries as a result. Specifically, the ALJ found that Mitchell failed to establish objective findings supporting injuries to his back and neck and a causal connection between the incident and Mitchell's disability and need for medical treatment. The Commission affirmed the ALJ opinion, and this appeal followed.

The only issue on appeal is whether there is sufficient evidence to support the Commission's decision that Mitchell failed to prove by a preponderance of the evidence that he suffered compensable injuries to his back and neck. Typically, we review only the decision of the Commission, not that of the ALJ. *Southeast Ark. Hum. Dev. Ctr. v. Courtney*, 99 Ark. App. 87, \_\_\_ S.W.3d \_\_\_ (2007). However, in this case the Commission affirmed and adopted the ALJ's opinion as its own. *Id.* In so doing, the Commission makes 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 decision and the Commission's majority decision.

In reviewing a decision of the Commission, we view the evidence and all reasonable inferences in the light most favorable to the findings of the Commission. *Magnet Cove Sch. Dist. v. Barnett*, 81 Ark. App. 11, 97 S.W.3d 909 (2003). The Commission's findings will be affirmed if supported by substantial evidence. *Id.* Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.*; *see also Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). The issue on appeal is not whether we might have reached a different result or whether the evidence would have supported a contrary finding; if reasonable minds could reach the Commission's conclusion, we must affirm. *Linton v. Ark. Dep't of Correction*, 87 Ark. App. 263, 190 S.W.3d 275 (2004).

The ALJ found, and the Commission affirmed, that Mitchell failed to prove the existence of objective findings supporting his injuries. Mitchell argues on appeal that there

were objective findings supporting his injuries. He lists Dr. Massenelli's September 28, 2004, report that stated that Mitchell had significant limitations in cervical passive range of motion; the September 30, 2004, MRI that showed a disc herniation at C4-5; and Dr. Bryant's October 14, 2004, report that stated that Mitchell's "neck reveal[ed] tenderness and spasm."

A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D) (Supp. 2007). Objective findings are those findings that cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16)(A)(i) (Supp. 2007). We disagree with the Commission and hold that Mitchell did establish the existence of objective findings. The emergency room report, dated two days following the incident, stated that Mitchell suffered a "contusion" to his low back, both MRIs showed a disc herniation at the C4-5 level, and Dr. Bryant identified neck spasms. Each of these findings are objective, i.e., could not come under the voluntary control Mitchell.<sup>1</sup> *Bryant v. Staffmark, Inc.*, 76 Ark. App. 64, 61 S.W.3d 856 (2001) (recognizing that a contusion is an objective finding); *Searcy Indus. Laundry Inc. v. Ferren*, 82 Ark. App. 69,

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<sup>1</sup>While Mitchell argues that the cervical passive range-of-motion findings in his case are objective findings, we disagree based on our holding in *Mays v. Alumnitec, Inc.*, 76 Ark. App. 274, 64 S.W.3d 772 (2001). In *Mays*, we held that where there was no evidence establishing whether the passive range-of-motion tests were not under the voluntary control of the claimant, the results of that testing were not objective findings sufficient to support compensability. *Mays*, 76 Ark. App. at 278, 64 S.W.3d at 775. In the instant case, there is likewise no evidence in the record demonstrating that the passive range-of-motion tests employed by Dr. Massenelli were not subject to the voluntary control of Mitchell.

110 S.W.3d 306 (2003) (acknowledging that a herniated disc is an objective finding); *Univ. of Ark. Med. Sci. v. Hart*, 60 Ark. App. 13, 958 S.W.2d 546 (1997) (stating that muscle spasms are objective findings).

While we disagree with the ALJ and the Commission and hold that objective findings do exist in this case, this does not require reversal because we agree with the ALJ and Commission on the second issue—that Mitchell failed to establish a causal connection between the work incident and his disability and need for treatment. In a workers' compensation case, a claimant must prove a causal connection between the work-related accident and the disabling injury. *Stephenson v. Tyson Foods, Inc.*, 70 Ark. App. 265, 19 S.W.3d 36 (2000). The determination of whether a causal connection exists is a question of fact for the Commission to determine. *Jeter v. B.R. McGinty Mech.*, 62 Ark. App. 53, 968 S.W.2d 645 (1998).

There is substantial evidence in the record supporting the ALJ's and Commission's finding that Mitchell's work incident was not the cause of his disability and need for treatment. For example, the only objective finding discovered contemporaneously with the injury (two days later) was the contusion on Mitchell's lower back. In actuality, this finding is of little relevance because Mitchell's complaints and medical treatment centered around his neck—not his back. The only objective findings supporting a neck injury (the herniation and neck spasms) were not discovered contemporaneously with the injury—the MRI was taken more than one month after the incident and the neck spasms were noted more than two months after the incident. Further, we note that Mitchell had been treated consistently from

the time of the injury until the MRI in late September 2004 and no objective findings had been noted by any of his physicians at that time.

Mitchell's prior existing degenerative-disc disease also plays a significant role in causing a disconnect between Mitchell's work incident and his disability and need for treatment. Medical records clearly showed that Mitchell had suffered from very similar complaints in his neck and back for years leading up to the August 2004 incident. Beginning in February of 1999, Mitchell began complaining of shoulder pain, at which time his treating physician recommended a cervical x-ray. The following month, Mitchell was diagnosed with cervical degenerative-disc disease. In December 1999, Mitchell began complaining of low back pain and was later diagnosed with lumbar degenerative-disc disease. He continued to receive medical treatment for both his neck and back until June 2002. He was seen for complaints of mid-back pain following a fall in June 2004—just two months prior to the accident.

Finally, Dr. Shahim's testimony was equivocal on the issue of causation. He testified that if Mitchell was not suffering from symptoms prior to the work incident, then Dr. Shahim would opine that the work incident was the cause of his current symptoms and need for treatment. However, Dr. Shahim also testified that if Mitchell was symptomatic prior to the work incident, then his opinion would be that Mitchell's current condition was not caused by his work incident but rather by his pre-existing degenerative condition. Because Dr. Shahim equivocated when giving his opinions, the ALJ and Commission found Dr. Shahim's testimony speculative and discounted it. It is the Commission's function to weigh the medical evidence and assess the credibility and weight to be afforded to any testimony. *King v.*

*Peopleworks*, 97 Ark. App. 105, \_\_\_ S.W.3d \_\_\_ (2006). Once the Commission has made its decision on issues of credibility, we are bound by that decision. *Cottage Cafe, Inc. v. Collette*, 94 Ark. App. 72, 226 S.W.3d 27 (2006).

Therefore, based on our standard of review, we hold that fair-minded persons with these same facts could have reached the same conclusion as the Commission. For these reasons we affirm the Commission's decision denying benefits to Mitchell.

Affirmed.

ROBBINS and BAKER, JJ., agree.