ARKANSAS COURT OF APPEALS

DIVISION III
No. CA08-227

CLIFF MASON APPELLANT V. QUALITY MILLWORK, INC. FIRSTCOMP INSURANCE CO. APPELLEES	**Opinion Delivered** October 1, 2008 AN APPEAL FROM THE ARKANSAS WORKERS' COMPENSATION COMMISSION [F600861] AFFIRMED

WENDELL GRIFFEN, Judge

By opinion filed November 27, 2007, the Workers' Compensation Commission found that appellant Clifton Mason failed to prove by a preponderance of the evidence that he sustained a compensable injury. Appellant contends that the Commission's decision is not supported by substantial evidence. Specifically, he argues that the Commission had no basis for discrediting his testimony. The record provides substantial evidence for the Commission's findings; accordingly, we affirm.

Appellant began working for appellee on September 29, 2005. His job required lifting, loading, and carrying heavy pieces of wood. Appellant alleged that he sustained a compensable injury in October 2005, though he could not recall the specific day. At the hearing before the administrative law judge (ALJ), appellant described two incidents involving a person whom appellant could only describe as a twenty-year-old man. During the first incident, he and the twenty-year-old were carrying a twelve-foot-long piece of crown molding. The

twenty-year-old dropped his end, causing the crown molding to bounce and hit appellant in his arm. Appellant testified that he had pain in his upper arm for several days.

The second alleged incident, for which appellant was making a claim for benefits, involved the twenty-year-old man and a person whom appellant could only remember as a Mexican. Company policy dictated that employees were to use a forklift to retrieve pieces of plywood from the shelf. Despite this policy, the Mexican climbed ten feet to get a piece of plywood that weighed approximately 125 pounds. The twenty-year-old did not grab his end of the wood, and the board hit appellant in the stomach. Appellant testified that he did not feel pain anywhere but in his stomach. Later that day, however, he started feeling pain in "the shoulder blade area of [his] back." He continued to work that day and did not see a doctor. Appellant claimed that he showed his supervisor, David Echols, his stomach the next day and that his stomach had a bruise.

On cross-examination, appellant stated that he did not mention the first incident during the deposition because no one asked him about it. He also did not recall telling his treating neurosurgeon, Dr. David Knox, about the first incident, explaining that he did not think the first incident had anything to do with his back problems. Appellee's counsel also showed appellant his Form AR-C, where appellant reported that the accident occurred when he was lifting wood and that he felt a pop in his neck and back. Appellant remarked that, while the AR-C did not mention a piece of wood falling and hitting him in the abdomen, he opined that the falling piece of wood caused his neck injury. He also admitted that in his deposition, he testified that he started having symptoms in his neck a couple of days after the

accident occurred, which differed from his hearing testimony that his shoulder blade symptoms started the day of the incident and worsened days later. Appellee's counsel also brought to appellant's attention that, during the deposition, he replied yes when asked whether he woke up with neck pain. Appellant stated that the area counsel was calling appellant's neck was actually "under his shoulder blade." When asked why he did not bring up this discrepancy during the deposition, appellant stated that no one raised the issue. He also acknowledged that, though he stated during his deposition that he was not taking any medicine, he was taking Tylenol and some of his sister's pain medication.

Echols also testified at the hearing. He recalled the first incident where appellant's arm was hit by the board and stated that appellant continued to work without problems. He did not remember anyone reporting the second incident. He testified that appellant first reported a problem with his back on or about November 4, 2005, and that appellant did not know how he had hurt himself. It was not until four days later that appellant claimed that his back problem was work-related. Echols also denied that appellant showed him his bruised abdomen. On cross-examination, Echols acknowledged that a Mexican was working during the time that appellant claimed he was injured and that the Mexican had to be reprimanded for climbing on the shelves to retrieve items. He also admitted that a twenty-year-old was working around that same time who was fired after working only two weeks.

The medical records show that appellant first presented to nurse practitioner Max Beasley on November 8, 2005. Appellant submitted to an x-ray, which showed degenerative changes at C5-C6 with anterior osteophytes. The clinic history on the report reads, "[Patient]

states he was lifting a heavy load of wood when he felt pain in his neck and middle back, [complained of] neck and middle back pain with numbness in his left arm to the fingers." However, in a letter to appellee, Nurse Beasley wrote that while appellant was "unable to recall a specific date of injury or inciting event other than approximately two weeks ago he was working with a board overhead when the other person that had the board dropped their end and this caused [appellant's] end of the board to fall down onto the right lower quadrant of his abdomen." A subsequent MRI of appellant's cervical spine yielded an impression of spondylosis with left foraminal stenosis at C5-C6 and C6-C7.

Appellant was later treated by Dr. Luke Knox, who in letters dated April 28, 2006, and May 16, 2006, opined that appellant's injury was work-related. Dr. Knox submitted to a deposition on October 2, 2006. He stated that disc herniation could be caused by lifting a heavy object, but that it could also be caused by car wrecks, slips, falls, twists, coughs, or sneezes. He opined that appellant suffered a work-related injury because that conclusion was consistent with the history appellant told him; however, appellant told him that appellant's injury was the result of a lifting incident. When presented with the history as stated by Nurse Beasley, where appellant reported that the accident occurred when he was hit with a board in the abdomen, Dr. Knox replied that it was not the same history he was given. He stated that stomach trauma could cause cervical disc herniation, though such injuries are not normal. He opined that if appellant were hit in the abdomen, continued working, and had no problems in the neck, it would be speculation to state that the hit to the abdomen caused his neck pain. When cross-examined by appellant's counsel, Dr. Knox stated that the history

given to Nurse Beasley was consistent with his original opinion that his disc herniation was work related, though he stated after further questioning that, the more time between the incident and the symptoms, the less likely the symptoms would be related to the incident.

The ALJ found that appellant failed to prove by a preponderance of the evidence that he suffered a compensable neck injury. While she agreed that appellant was in need of treatment for an injury to his cervical spine, she questioned whether that injury occurred while appellant was working for appellee. Specifically, the ALJ wrote:

> The claimant cannot recall a date, time, a period of the day, the names of anyone he was working with, or a day of the week when his injury occurred. The claimant has testified that he reported the plywood incident to his supervisor that day and even showed him the bruise on his abdomen. [David Heath] Echols, the claimant's supervisor, denies any type of report of a plywood incident or seeing a bruise on the claimant's abdomen. Mr. Echols was quite straight forward in his testimony concerning the firing of a 20 year old, and not denying that some of the help does climb up on the shelving to get down materials even though they have been instructed not to do so. Based upon all of the evidence, as well as the numerous contradictions in the claimant's testimony, I find that this claim should be denied in its entirety.

The Commission affirmed and adopted the opinion of the ALJ. This appeal followed.

For his sole point on appeal, appellant contends that the Commission's opinion is not supported by substantial evidence. Specifically, he asserts that, while the Commission's opinion noted "numerous contradictions" in his testimony, the opinion did not enumerate them sufficiently for adequate appellate review. He further argues that the medical evidence is consistent with his testimony and that the Commission erred in crediting Echols's testimony over his.

When reviewing decisions from the Workers' Compensation Commission, 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, we must affirm the decision. *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999).

To receive workers' compensation benefits, a claimant must establish (1) that the injury arose out of and in the course of the employment, (2) that the injury caused internal or external harm to the body that required medical services, (3) that there is medical evidence supported by objective findings establishing the injury, and (4) that the injury was caused by a specific incident and identifiable by the time and place of the occurrence. Ark. Code Ann. § 11-9-102(4) (Supp. 2007). Compensation must be denied if the claimant fails to prove any one of these requirements by a preponderance of the evidence. *Mikel v. Engineered Specialty Plastics*, 56 Ark. App. 126, 938 S.W.2d 876 (1997). Questions concerning the credibility of witnesses and the weight to be given their testimony are within the exclusive province of the Commission. *White v. Gregg Agricultural Ent.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). Once the Commission has decided an issue of credibility, the appellate court is bound by that decision. *Logan County v. McDonald*, 90 Ark. App. 409, 206 S.W.3d 258 (2005).

This case comes down to the credibility of appellant's testimony, and the Commission was entitled to find appellant's testimony not credible. The record shows that appellant gave

at least two accounts of the incident that allegedly caused his shoulder blade/neck injury, and there was contradictory testimony regarding whether appellant reported the incident to his supervisor. While appellant asserts that Dr. Knox's testimony supports a finding that appellant injured himself at work, said testimony would also support a finding that appellant injured himself doing any number of activities unrelated to work.

This is another of many cases where the Commission was presented with evidence that would support both a finding of compensability and a finding of non-compensability. We can only reverse if the Commission's findings are not supported by substantial evidence, and substantial evidence supports the Commission's findings. Accordingly, we affirm.

Affirmed.

HART and HUNT, JJ., agree.