

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA08-38

DIEBOLD, INC., ZURICH AMERICAN
INSURANCE, and CRAWFORD &
COMPANY,

APPELLANTS

v.

NICHOLAS WEBBER,

APPELLEE

Opinion Delivered 4 June 2008

AN APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [NO. F511949]

AFFIRMED

D.P. MARSHALL JR., Judge

Nicholas Webber was injured while he worked for Diebold, Inc. Part of his job involved driving a truck to various locations and repairing automated teller machines. He went home early one Friday because he had serious stomach, back, and leg pain. The next Monday, Webber e-mailed his boss and did not go to work. He said that he had been “sick” on Friday, would be back at work on Tuesday but might be “slow,” and had a doctor’s appointment later in the week. After running some tests, his doctor told Webber that he had a herniated disc in his back, for which Webber later had two back surgeries. He sought workers’ compensation for his gradual-onset back injury. The Workers’ Compensation Commission adopted the ALJ’s opinion, and awarded Webber benefits for his medical treatment and temporary total disability. Diebold appeals.

Substantial evidence supports the Commission’s decision. *Smith-Blair, Inc. v. Jones,*

77 Ark. App. 273, 276–77, 72 S.W.3d 560, 563 (2002). To receive benefits for a gradual-onset injury, Webber had to prove that he had a back injury that (1) caused him internal or external physical harm, (2) was not caused by a specific incident and not identifiable by a time and place of occurrence, (3) and arose out of and in the course of his employment at Diebold. Ark. Code Ann. § 11-9-102(4)(A)(ii)(b) (Supp. 2007). Then he had to show that his back injury was the major cause of his need for his medical treatment. Ark. Code Ann. § 11-9-102(4)(E)(ii). Substantial evidence supports the Commission’s decision that Webber did so.

Diebold disputes the compensability of the injury because Webber’s email to his supervisor stated that he left work “sick,” not injured. Webber explained that he chose to use the word “sick” instead of “injured” because he was from England where “sick” means generally “unwell.” The ALJ accepted this explanation, and specifically found Webber’s testimony about the cause of his injury credible. *Smith-Blair, Inc.*, 77 Ark. App. at 279–80, 72 S.W.3d at 565. The Commission adopted the ALJ’s decision that, based on the close proximity between the onset of his symptoms and the work he was then doing for Diebold, his injury was compensable.

Webber presented objective medical evidence of his injury in the form of MRIs and doctors’ reports that did not identify a specific accident causing Webber’s injury, but indicated that his back pain became seriously symptomatic in October 2005. Diebold argues that Webber did not prove that the herniated disc was caused by getting in and out of his truck to work on the ATMs. Dr. Arthur Johnson, however, stated that Webber’s job “could

definitely contribute to the cause of his ruptured disc with repeated getting in and out of the truck seat requiring awkward positioning and stretching . . . and lifting . . . as well with subsequent repeated impact of getting down from the high level.” Webber also presented doctors’ reports, which indicated that his back injury contributed to his disability or need for treatment—specifically the back surgeries.

Based on this body of evidence, the Commission found that Webber’s work injury was a major cause of his need for medical treatment, including back surgery, and awarded him compensation for that treatment. It also awarded temporary total disability benefits after finding that Webber would be under medical treatment and physically unable to perform any job through at least 20 February 2006. *King v. Peopleworks*, 97 Ark. App. 105, 108, 244 S.W.3d 729, 732 (2006). Because substantial evidence supports both of these awards, we affirm the Commission’s decision. *Smith-Blair, Inc.*, 77 Ark. App. at 276–77, 72 S.W.3d 560 at 563.

HART and GLADWIN, JJ., agree.