

ARKANSAS COURT OF APPEALSDIVISION IV
No. CA 11-1108JODIE M. VAUGHN (now KUMMER)
APPELLANT

V.

MIDLAND SCHOOL DISTRICT,
ARKANSAS SCHOOL BOARD
ASSOCIATION, and RISK
MANAGEMENT RESOURCES
APPELLEES

Opinion Delivered May 16, 2012

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION, [NO. F903387]

AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Jodi Vaughn (now Kummer) was denied workers' compensation benefits for a cervical injury that she said occurred at work on April 3, 2009, while she was teaching for appellee Midland School District.¹ Kummer did not prevail before the administrative law judge (ALJ) or before the Commission. She appeals, contending that the denial of her claim is not supported by substantial evidence. We affirm.

In reviewing a decision from the Workers' Compensation Commission, we review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings and affirm if the decision is supported by substantial evidence. *White v. Frolic Footwear*, 59 Ark. App. 12, 952 S.W.2d 190 (1997). Substantial evidence exists only if reasonable minds could have reached the same conclusion without resort to speculation or

¹She initially sought benefits for back and neck injuries, but her appeal is limited to compensability of cervical issues in her neck.

conjecture. *White Consol. Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001). 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 of the Commission. *Cedar Chem. Co. v. Knight*, 99 Ark. App. 162, 258 S.W.3d 394 (2007). When the issue is denial of benefits, our review requires that we determine whether the Commission's decision displays a substantial basis for the denial of relief. *Hickman v. Kellogg, Brown & Root*, 372 Ark. 501, 277 S.W.3d 591 (2008).

With regard to an aggravation, an employer takes the employee as he finds him, and employment circumstances that aggravate preexisting conditions are compensable. *Id.* A preexisting disease or infirmity does not disqualify a claim if the employment aggravated, accelerated, or combined with the disease or infirmity to produce the disability for which workers' compensation benefits are sought. *Id.* An aggravation is a new injury resulting from an independent incident, so it must meet the definition of a compensable injury in order to establish compensability for the aggravation. *Id.* A compensable injury must be established by medical evidence supported by objective findings, which are findings that cannot come under the control of the patient, such as complaints of pain or tenderness. See Ark. Code Ann. § 11-9-102(4)(D) & (16) (Supp. 2009); *Ozark Naturals Foods v. Pierson*, 2012 Ark. App. 133. As interpreted by our appellate courts, this means that an aggravation, being a new injury, must be evidenced by objective medical findings of a new injury to the preexisting condition. See *Barber v. Pork Group, Inc.*, 2012 Ark. App. 138; *Grothaus v. Vista Health, LLC*,

2011 Ark. App. 130, ___ S.W.3d ___; *Mooney v. AT&T*, 2010 Ark. App. 600, ___ S.W.3d ___.

Although objective medical findings are required to establish the existence and extent of an injury, objective medical findings are not required to establish causation. *Qualserv Corp. v. Rich*, 2011 Ark. App. 548. Causation often comes down to a decision on the credibility of the claimant; medical evidence on causation is not required in every case. *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999); *Cooper Tire & Rubber Co. v. Strickland*, 2011 Ark. App. 585; *Wal-Mart Stores, Inc. v. Leach*, 74 Ark. App. 231, 48 S.W.3d 540 (2001).

At the hearing on her claim, appellant, who was in her mid-thirties, testified that she became a public-school music teacher in 1998. She acknowledged that she had prior lumbar problems dating back to 2002. She underwent laminectomies and decompressions at the lower lumbar levels in June 2002, performed by a neurosurgeon, Dr. Rebecca Barrett-Tuck. Appellant was in an automobile accident in September 2002 that hurt her low back again, and a contemporaneous x-ray showed evidence of a cervical sprain, indicated by some reversal of normal cervical lordosis. The treatment that followed was geared toward pain management in her low back. She eventually underwent another lumbar surgery in 2005.

In August 2007, following an incident where she was attacked by a student at a school, appellant sought treatment for her lumbar spine in Germany, where a complete spinal MRI was conducted. The German surgeon operated again at her L3-4, L4-5, and L5-S1 low spine, completing fusion with implanted prosthetics. In postsurgical notes, the German surgeon

commented that the complete MRI showed moderate bulging at C5-6, which the surgeon was interested in discussing. Appellant returned to Arkansas to continue with medication and rehabilitation for her low back.

Appellant began working for Midland School District in August 2008 teaching a music class to middle-school children. On the afternoon of Friday, April 3, 2009, she said that as classes were in the midst of changing, an average-size fourth-grade student ran into her, which “slammed” her into the classroom door and wall. On a Form AR-N that she completed the same day, she reported hip and back pain as a result of the collision at school. She said she was unable to stand or play the piano for the remainder of the school day, although she stayed until school dismissed. Appellant went home, and as the weekend progressed, she said that her neck began to hurt terribly. Appellant went to see her family physician, Dr. Michael Crawley, on Monday, April 6, and Dr. Crawley’s notes reflect her report of the school incident and complaints of neck, hip, and back pain. An MRI was performed on her cervical spine on April 18, revealing mild bulging at C3-4, “maybe” a small herniation at C4-5, a moderate herniation at C5-6, and a “tiny” herniation at C6-7. An MRI was conducted on her lumbar spine the same day, noting no definite abnormalities except the presence of artificial prosthetics from her 2007 surgery in Germany. On April 22, Dr. Crawley noted her continued cervical pain; he referred appellant to a neurosurgeon for an evaluation.

Appellant presented to the neurosurgeon, Dr. Rebecca Barrett-Tuck, on May 19. Dr. Barrett-Tuck recorded appellant’s prior surgical history at the lumbar levels, her morbid obesity, her inability to work following the school-door incident, and her desire for surgical

intervention on her ruptured C5-6 disc that had not responded to conservative treatment. The neurosurgeon's examination revealed decreased range of motion in her neck, which "is going to be due to muscular spasm and poor efforts in attempting to move the neck."

She underwent an anterior cervical discectomy and fusion at C5-6 with insertion of a plate, screws, and bone graft on June 22. In follow-up visits through the autumn of 2009, her surgeon recorded the progress of her healing from cervical surgery and opined that she could slowly return to work.

When questioned by the respondent's attorney, Dr. Barrett-Tuck stated that in comparing the 2007 MRI to the 2009 MRI of her disc at C5-6, the images appeared to be very similar if not identical. Dr. Barrett-Tuck stated her belief that appellant was suffering an "exacerbation" or "aggravation" of a pre-existing condition, "rather than an entirely new injury," based upon appellant's explanation of the onset of severe neck pain. Dr. Barrett-Tuck agreed that she could not identify an objective new finding to support the existence of an aggravation; she believed that her patient's history supported her medical opinion that the work incident set off the cervical symptoms.

On this evidence—the medical records, the deposition testimony of Dr. Barrett-Tuck, and the testimony of appellant—the Commission found that the minor cervical abnormalities found at C3-4, C4-5, and C6-7 in 2009 were not acute problems and were not caused by the alleged door event. Moving to the primary issue, the Commission found that the bulging at C5-6 was in existence dating back to 2007, that "Dr. Barrett-Tuck's opinion is entitled to significant probative weight and value," and that "there were no new objective medical

findings establishing a compensable injury.” This finding mooted any further examination of the elements of her claim to prove, such as causation. Nonetheless, the Commission went on to find that appellant failed to prove that she sustained an accidental injury causing physical harm to her neck on April 3, 2009, in the course of her employment.

On appeal, appellant argues that Arkansas Code Annotated section 11-9-102(4) has been misinterpreted to require “new” objective medical findings to establish a new injury when the claimant seeks benefits for an aggravation of a preexisting condition. We cannot agree. We have interpreted the Arkansas Workers’ Compensation statutes in precisely that manner. See *Hickman, supra*; *Barber v. Pork Group, Inc., supra*; *Grothaus v. Vista Health, LLC, supra*; *Mooney v. AT&T*, 2010 Ark. App. 600, ___ S.W.3d ___; *Long v. Wal-Mart Stores, Inc.*, 98 Ark. App. 70, 250 S.W.3d 263 (2007); *King v. Peopleworks*, 97 Ark. App. 105, 244 S.W.3d 729 (2006); *Liaromatis v. Baxter Cnty. Reg’l Hosp.*, 95 Ark. App. 296, 236 S.W.3d 524 (2006). The legislature has not seen fit to amend the workers’ compensation statutes to alter or reverse this interpretation.

Affirmed.

GLADWIN and GRUBER, JJ., agree.