

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA11-283

ANGELA R. HARRIS

APPELLANT

V.

WEYERHAEUSER COMPANY,
SECOND INJURY FUND, and DEATH &
PERMANENT TOTAL DISABILITY
TRUST FUND

APPELLEES

Opinion Delivered November 9, 2011APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[No. F500521]

AFFIRMED

LARRY D. VAUGHT, Chief Judge

Appellant Angela Harris appeals from a decision of the Workers' Compensation Commission denying her request to be declared permanently and totally disabled, or, in the alternative, to be entitled to wage-loss-disability benefits, and to obtain additional medical treatment. We affirm.

Harris sustained a compensable injury to her lower back while working for appellee Weyerhaeuser Company on or about November 1, 2004. Her injury occurred while performing her employment services as a utility worker. Specifically, she was loading approximately ten sheets of wooden veneer, and as she pulled the wet veneers from the cutter, she slipped and fell on oil that had leaked from a forklift. Immediately following the accident, she reported the incident to her employer.

On November 22, 2004, she began treatment with Dr. Patrick Antoon. Ultimately, on May 5, 2005, she was diagnosed with "significant thoro-lumbar scoliosis," which Dr. Antoon attributed to "pre-existing significant thoro-lumbar scoliosis [sic] that was present prior to her

[Workers' Compensation] related injury." She treated consistently with Dr. Antoon until December 14, 2005.

On May 18, 2005, Harris also saw Dr. Wayne L. Bruffet, who performed an MRI and myelogram on Harris that showed she was "essentially normal." Dr. Bruffet opined that Harris had "no surgical problem in her spine" and that he did "not see any injury that would result in any type of permanent impairment." Dr. Bruffet also noted that Harris had a "pessimistic" attitude regarding returning to work. Based on this observation, coupled with Harris's purely subjective complaints of pain, Dr. Bruffet placed her on a return-to-work status, restricting her to sedentary work with no pushing, pulling, or lifting over five pounds and no prolonged standing.

On April 13, 2010, the matter was presented to an administrative law judge (ALJ), who concluded that Harris had failed to prove by a preponderance of the evidence that she was permanently totally disabled, or entitled to wage-loss disability or additional medical treatment. The ALJ specifically found that Harris was not a credible witness based on her assertion that she had not previously complained of back pain, despite a medical history (dating back to the 1980s) documenting numerous prior complaints of back pain. The ALJ's opinion was affirmed and adopted by the Commission, and Harris now appeals from that decision.

On appeal, Harris contends that the Commission erroneously concluded that she failed to prove that she was permanently and totally disabled and urges us to reverse the decision denying her additional benefits. When reviewing a decision of the Commission, we view all evidence and all reasonable inferences arising therefrom in the light most favorable to the

findings of the Commission and affirm those findings if they are supported by substantial evidence. *Caffey v. Sanyo Mfg. Corp.*, 85 Ark. App. 342, 344–45, 154 S.W.3d 274, 276 (2004). Substantial evidence is that which a reasonable person might accept as adequate to support a conclusion. *Olsten Kimberly Quality Care v. Pettey*, 328 Ark. 381, 385, 944 S.W.2d 524, 526 (1997). Under the substantial-evidence standard of review, the issue is not whether the evidence would have supported a contrary finding—the issue is whether substantial evidence supports the Commission’s findings. *Henson v. Club Prods.*, 22 Ark. App. 136, 140, 736 S.W.2d 290, 291 (1987).

“Permanently totally disabled” means inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment. Ark. Code Ann. § 11-9-519(e)(1) (Repl. 2002). The burden of proving an inability to earn any meaningful wage rests exclusively with the employee. Ark. Code Ann. § 11-9-519(e)(2). The same factors that are considered when analyzing wage-loss-disability claims are usually considered when analyzing permanent- and total-disability claims. Ark. Code Ann. § 11-9-519(c). Some factors to be considered when evaluating the existence of a permanent and total disability include claimant’s age, education, work experience, medical evidence, motivation, and credibility. *Cross v. Cranford Mem’l Hosp.*, 54 Ark. App. 130, 923 S.W.2d 886 (1996).

This case rests or falls on Harris’s credibility (or, more accurately, her lack thereof). The ALJ’s decision (as adopted by the Commission) noted that Harris’s testimony “revolved around her subjective complaints of pain and her subjective functional ability.” And, after hearing the testimony, the ALJ found Harris “to be a very uncredible witness.” The ALJ pointed out that

Harris “testified under oath that she had never had any back problems before and had never complained about her back being hurt or stiff before.” The referenced testimony follows:

Q: Had you ever had any back problems before?

A: No.

Q: Had you ever complained about your back being hurt or stiff before?

A: No.

The ALJ went on to note that he found

it incredible that [Harris] would testify that she had never had back problems before her compensable injury when the medical records contained in the record are replete with prior back problems. In fact, the medical records are so replete with the claimant’s previous back problems it would be difficult to recite each and every one.

He specifically noted the following record notation for the purpose of impeaching Harris’s representation that she had not previously complained of back pain: 1) “There is an emergency room record from June 3, 1989, which states, ‘Diagnosis: back pain and diarrhea’”; 2) “There is a report from Dr. Clifton Salmon dated August 22, 1989, which states, ‘back tender to palpation in lumbar spine,’ lumbar strain’”; 3) On December 20, 1996, Harris “treated again with Dr. Salmon who stated, ‘seen in ER last p.m. with lumbar strain. Pt. states she hurt her back lifting heavy boxes at work, c/o pain and spasm, but no radicular symptoms’”; 4) “A report from Homer Medical Hospital dated December 20, 1996, states, ‘c/o pain in lower left side of back after picking up heavy box at work’”; 5) “Again, on June 26, 2000, a report from Dr. Clifton Salmon states, ‘33 y/o with c/o lower back pain and spasm. Started yesterday after she bent over. Has had problems with her back off and on for the last [three] years’”; 6) “A Homer Memorial Hospital record dated July 19, 2002, which is an emergency room record, states, ‘wood

fell on back Thursday”); 7) “A report from January 17, 2004, from the Claiborne Parish Therapy Center states, ‘pt. went to ortho—stated to continue PT, may have disc tear LB.’”

According to the ALJ, Harris’s credibility “again came into question” when she was asked whether she wrote Mr. Ken Brantley a letter:

Q: And at that point you saw Mr. Brantley, Ken Brantley?

A: Yes.

Q: You wrote him a letter and said, I have these medical restrictions and I’ll have them from now on?

A: No, I did not write a letter, the doctor gave me my report and my restrictions and handed me the paper to take to my job, and hopefully they can put you on some type of light duty. And I went back the day he put on there to return to work, which was May 23rd, and I returned to work, to work, prepared to work, and went straight to Kenneth Brantley, presented him the doctor’s report to return to work. He looked at it, read it, looked at me and said, we don’t have any light duty.

Only after vigorous cross-examination did Harris finally admit that she had in fact written Kenneth Brantley a letter.

Additionally, no doctor assigned Harris a permanent impairment rating in conjunction with her compensable injury. Dr. Bruffett’s May 18, 2005 report, which the ALJ found “to be the most reliable in the record,” stated that the MRI and the myelograms “were essentially normal” and there were “no surgical problems in her spine.” Further, the record also shows that Harris’s current (albeit subjective) pain can be explained by her preexisting scoliosis or her previous motor-vehicle accident.

We are mindful of the fact that a permanent impairment rating is not necessary in order for one to be found to be permanently and totally disabled. Even so, the quantum of evidence in this case more accurately supports a conclusion that Harris was not permanently and totally

disabled, but merely suffered a compensable back strain. Accordingly, there is more than substantial evidence to support the Commission's conclusion that Harris failed to show entitlement to permanent- and total-disability benefits, and we affirm on this point.

Harris alternatively claims that, if it is not found that she is permanently and totally disabled, she is entitled to wage-loss-disability benefits. When considering claims for permanent-partial-disability benefits in excess of the employee's permanent physical impairment, such factors as the employee's age, education, work experience, and other matters reasonably expected to affect her future earning capacity should be considered. Ark. Code Ann. § 11-9-522(b)(1). Here, the record shows that Harris did not receive a whole-body impairment rating as a result of her compensable injury—she merely sustained a back strain, and her MRIs and myelograms show that her back was “essentially normal.” Also, none of her treating doctors recommended any type of surgical intervention, and in fact the sole basis for any ongoing medical treatment was a subjective (deemed to be lacking in credibility) complaint of persistent pain. Therefore, based on the lack of permanent physical impairment as a result of her compensable back strain and the Commission's finding that Harris lacked the necessary credibility to establish her claim, it cannot be said that the Commission erred in finding that she failed to prove her entitlement to wage-loss-disability benefits by a preponderance of the evidence. We affirm on this point as well.

Harris's final alternative argument is that she should receive additional medical treatment. It is a factual question as to what constitutes reasonably necessary medical treatment. *Ark. Dep't of Corr. v. Holybee*, 46 Ark. App. 232, 878 S.W.2d 420 (1994). Here, the record shows that Harris

sustained a compensable lumbar strain and received treatment from various physicians. However, after testing and treatment, the consensus of these medical experts was that Harris's back was essentially normal, and no surgical treatment was necessary. In light of Harris's heavily discounted credibility, the Commission reasonably found that any additional medical treatment Harris needed was more likely related to her preexisting scoliosis or her prior motor-vehicle accident. Therefore, because there is substantial evidence to support the Commission's conclusion that Harris failed to prove that the additional treatment she sought was reasonable and necessary in connection with the injury that she received as required by Arkansas Code Annotated section 11-9-508(a), we affirm the Commission's denial of her request for additional medical treatment.

Affirmed.

GLADWIN and MARTIN, JJ., agree.