

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA 11-315

COOPER TIRE & RUBBER
COMPANY

APPELLANT

V.

STACY STRICKLAND

APPELLEE

Opinion Delivered OCTOBER 5, 2011

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION

[NOS. F902389, F905503]

AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Cooper Tire & Rubber Company appeals the award of benefits to appellee Stacy¹ Strickland in her claim regarding an alleged gradual-onset low-back injury that manifested itself on or around April 25, 2008. The administrative law judge (ALJ) found that Strickland proved by a preponderance of the evidence that her back problems were sustained at work, and he awarded her reasonably related medical treatment, certain periods of temporary total disability (TTD), and attorney's fees. Cooper Tire appealed to the Commission, which by a two-to-one vote affirmed and adopted the ALJ's decision, with slight modification in the dates of TTD. Cooper Tire appeals to our court, contending that the award of benefits is not supported by substantial evidence. We affirm.

¹The appellate briefs and medical forms in evidence primarily spell her name "Stacy," but her signature shows "Stacey."

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 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).

The evidence presented to the Commission included medical reports, Strickland's testimony, and the deposition testimony of neurosurgeon Dr. Reza Shahim. Strickland was hired by Cooper Tire at its Texarkana plant in late 1999 when she was twenty-one years old. She said she had not had back problems prior to her employment with Cooper Tire. She admittedly had intermittent complaints of back pain in 2003, 2004, and 2005, all of which she attributed to her work duties. By 2008, she had been working as a tire builder for about five years. This job required pulling and pushing materials ranging from 5–10 pounds to 15–20 pounds, depending on the size of the tire being built. Strickland specified an experience of back pain on the job on April 25, 2008, which she at first attributed to her menstrual cycle. She was thirty years old at the time. She nonetheless finished her shift and did not officially report a work injury.

Strickland presented on her own at HealthCare Express on May 1, complaining of low back pain and spasms. She was prescribed pain and anti-inflammatory medications and returned to work with restrictions. Strickland presented to family physician Dr. Williams in May as well, complaining of back pain. Dr. Williams ordered an MRI of the lumbar spine, performed on June 9, which was interpreted as showing mild degenerative disease at L4–5 and L5–S1. She underwent physical therapy and was prescribed more medication. She had been taken off work here and there between May and July.

In late July 2008, she presented to the emergency room because she was in terrible pain radiating into her right leg that her prescriptions did not alleviate. Her family doctor referred her to a neurologist, Dr. Clevenger, who ordered a myelogram/CT of her lumbar spine to investigate further and determine if something was “missed by the MRI scan.” She stated that if the records indicated that she reported a work injury on May 25 instead of April 25, 2008, it was just a mistake. The August 2008 report indicated L1–2 disc rupture, for which surgery was recommended. She tried conservative treatment instead, including a series of injections, and continued to work as she was able. In late August, she formally reported this as a workers’ compensation injury, which she said occurred on April 25 while performing her tire-building job.

In December 2008, Strickland underwent a sleep study, which determined that she had obstructive sleep-apnea syndrome. She filed this on her employee health insurance. Her medical records were uniform in reporting her weight in the 240-plus pound range, increasing in the months following April 2008. She underwent a lap-band procedure to address her

obesity. By January 2009, Strickland had her third steroid injection to manage her low back pain. Dr. Stephens gave her lifting restrictions and told her to work light duty beginning in February 2009.

By March 3, 2009, she felt her back condition was further aggravated by her work. Another MRI conducted in March 2009 showed evidence of herniations at L1–2 and L4–5. Neurosurgeon Shahim recommended surgical repair. Strickland filled out another claim form on that date “as a precaution.” The surgery, discectomy at L1–2 and discectomy and decompression at L4–5, was performed in late March 2009. She said she received some benefit from surgery, returning to light duty about a month later. Strickland said she was unable to do the work without a lot of pain. She reported to the emergency room in mid-June 2009 for increased pain. Thereafter, Dr. Shahim tried additional medications, more steroid injections, and physical therapy. Because she was still having back problems, Dr. Shahim ordered a myelogram in late November 2009. Dr. Shahim suggested additional conservative treatment with the possibility of another surgery. Cooper Tire terminated her employment prior to Dr. Shahim’s latest myelogram, citing excessive absences.

Strickland testified about her personal life, stating that she had two children, a fourteen-year-old son and a five-year-old daughter, who were helpful around the house. She did not receive child support, but her new boyfriend was living with them and paying rent and other expenses. In cross-examination, she admitted that she had altercations in previous relationships and that she had undergone lap-band surgery. She also admitted falsely stating that she was capable of working in her claim for unemployment for periods in March, April,

and May 2009, but she believed she could at least try to work. She agreed that her medical records did not have a uniform date of injury.

Dr. Shahim's deposition testimony was entered into evidence. He recited her report of injury consistent with the April 25, 2008 date, describing her complaints as low-back, right-hip, and right-leg pain. He believed that her work duties predisposed her to these kinds of back problems. Dr. Shahim believed that inflammatory changes at L4-5 were the primary source of pain, which was likely aggravated after her first surgery.

The ALJ found that Strickland carried her burden of proving by a preponderance of the evidence that she sustained a compensable gradual-onset back injury while in Cooper Tire's employ. This mooted any discussion of specific-incident injury. The ALJ found that the herniations at L1-2 and L4-5 were shown objectively on diagnostic tests and obviously required medical treatment. He rejected the early MRI as a misdiagnosis when it indicated only degenerative changes and not the herniations. The ALJ found her testimony credible that she did not have back problems prior to her employment with Cooper Tire and that all the medical records showed a progression of minor to major back problems during her employment. He described her work duties as requiring "strenuous moving and lifting." He stated, "I have no doubt that her job related activities with Cooper Tire are the major cause of her present disability and need for treatment." He found that any aggravation of pre-existing degenerative disc disease was also compensable as a natural and probable consequence of her work injury. The ALJ awarded her periods of TTD in 2008 and 2009 commensurate

with those times when Strickland was unable to work. This opinion was affirmed and adopted by the Commission, with the exception of minor corrections in the dates of TTD.

Cooper Tire argues on appeal that Strickland was not credible and that she failed to prove a causal connection between her medical conditions and her work. It contends specifically that Strickland was never clear about when or how she actually hurt her back, she lied to the unemployment office about her ability to work, she was morbidly obese, and she had a history of back problems that could easily be related to her personal life. Cooper Tire asks that her claim be reversed and dismissed in its entirety because the Commission's opinion is based upon speculation and conjecture.

Strickland responds that Cooper Tire is essentially picking apart inconsistencies in the medical records and challenging her credibility, both factual issues left solely to the Commission to resolve. *Martin Charcoal, Inc. v. Britt*, 102 Ark. App. 252, 284 S.W.3d 91 (2008). She also notes that whether a causal relationship exists between the injury and the work is a factual question for the Commission. *Hernandez v. Wal-Mart, Inc.*, 2009 Ark. App. 531, 337 S.W.3d 531; *Long v. Wal-Mart Stores, Inc.*, 98 Ark. App. 70, 250 S.W.3d 263 (2007); *Smith-Blair, Inc. v. Jones*, 77 Ark. App. 273, 72 S.W.3d 560 (2002).

In this instance, the Commission determined that Strickland's back suffered a gradual-onset injury, exempted from the burden of proving a specific incident identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102(4)(A)(ii). The injury still must arise out of and in the course of employment, and it must be the major cause of the disability or need for treatment. *Id.* at subsection (4)(E)(ii). Medical evidence on causation is not required in every

Cite as 2011 Ark. App. 585

case; causation often comes down to a decision on the credibility of the claimant. *See Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999); *Wal-Mart Stores, Inc. v. Leach*, 74 Ark. App. 231, 48 S.W.3d 540 (2001).

The majority of Commissioners agreed with the ALJ's assessment of Strickland's testimony and the medical evidence. Based upon the standard of review, we affirm.

PITTMAN and HART, JJ., agree.