

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA11-377

RICHARD LEACH

APPELLANT

V.

COOPER TIRE AND RUBBER
COMPANY and REGIONS CLAIMS
MANAGEMENT

APPELLEES

Opinion Delivered SEPTEMBER 28, 2011APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F702952]REVERSED AND REMANDED ON
DIRECT APPEAL; AFFIRMED ON
CROSS-APPEAL**RAYMOND R. ABRAMSON, Judge**

On March 10, 2007, Richard Leach was working as an electrician with Cooper Tire & Rubber Company (Cooper Tire) when he sustained injuries to his chest, lungs, and abdomen after he was crushed between two conveyor belts. Leach also claimed that he suffered back and head injuries in the accident. He sought permanent partial disability (PPD) and wage-loss benefits for the head and back injuries he allegedly sustained in the accident. Cooper Tire disputed the compensability of the back and head injuries, as well as the appropriateness of PPD and wage-loss benefits.

A hearing was held on Leach's claims on April 28, 2010. After hearing the evidence and reviewing the files and medical records presented, the administrative law judge (ALJ) found that Leach's back injury was compensable, but that he had failed in his burden of proving a compensable head injury. The ALJ awarded reasonable and necessary medical expenses related

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to his back injury, but denied Leach's claim for PPD and wage-loss benefits, finding that Leach had failed to prove that his compensable back injury, not his degenerative disc disease, was the major cause of his disability. Both Leach and Cooper Tire appealed the decision of the ALJ.

Thereafter, the Commission completed a *de novo* review of the record and affirmed and adopted the findings of the ALJ. Both parties have appealed that determination. On direct appeal, Leach contends that the trial court erred in denying his claim for PPD and wage-loss benefits. He does not, however, appeal the determination that his head injury was not compensable. Cooper Tire filed a cross-appeal, disputing the Commission's finding that Leach suffered a compensable back injury.

Because Cooper Tire has challenged the Commission's finding that Leach suffered a compensable back injury—the claim upon which all other benefits depend—we first consider its cross-appeal, as a reversal on this issue would be dispositive of all other issues.

Typically, on appeal to this court, we review only the decision of the Commission, not that of the ALJ. *Daniels v. Affiliated Foods Sw.*, 70 Ark. App. 319, 17 S.W.3d 817 (2000). In this case, the Commission affirmed and adopted the ALJ's opinion as its own, which it is permitted to do under Arkansas law. *Death & Permanent Total Disability Trust Fund v. Branum*, 82 Ark. App. 338, 107 S.W.3d 876 (2003). Moreover, in so doing, the Commission makes the ALJ's findings and conclusions the findings and conclusions of the Commission. *See ITT/Higbie Mfg. v. Gilliam*, 34 Ark. App. 154, 807 S.W.2d 44 (1991). Therefore, for purposes of our review, we consider both the ALJ's opinion and the Commission's opinion.

In appeals involving claims for workers' compensation, we view the evidence in the light

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most favorable to the Commission's decision and affirm the decision if it is supported by substantial evidence. *Galloway v. Tyson Foods, Inc.*, 2010 Ark. App. 610, ___ S.W.3d ___. Substantial evidence exists if reasonable minds could reach the Commission's conclusion. *Id.* The issue is not whether the appellate court might have reached a different result from the Commission; if reasonable minds could reach the result found by the Commission, the appellate court must affirm. *Id.*

Cooper Tire contends that there was no substantial evidence that Leach sustained a back injury on March 10, 2007, or that the treatment for this condition was related to his March 10, 2007 accident. Instead, Cooper Tire maintains that any pain or difficulties that Leach may be experiencing is related to his degenerative disc condition. Cooper Tire notes that Leach failed to report any complaints of back pain for over ninety days after the accident and failed to present any objective evidence that his complaints of back pain were related to his accident rather than his preexisting degenerative disc disease.

Here, it is undisputed that Leach had preexisting disc degeneration prior to the accident. However, an employer takes an employee as he finds him, and employment circumstances that aggravate preexisting conditions are compensable. *Heritage Baptist Temple v. Robinson*, 82 Ark. App. 460, 120 S.W.3d 150 (2003). An aggravation of a preexisting noncompensable condition by a compensable injury itself is compensable. *Oliver v. Guardsmark*, 68 Ark. App. 24, 3 S.W.3d 336 (1999). An aggravation, being a new injury with an independent cause, must meet the requirements for a compensable injury. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). Arkansas Code Annotated section 11-9-102(4)(A)(i) (Supp. 2009) defines a

compensable injury as

[a]n accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment and which requires medical services or results in disability or death. An injury is “accidental” only if it is caused by a specific incident and is identifiable by time and place of occurrence.

The Commission found Leach’s back injury to be compensable as a new injury, or, at the very least, an aggravation of his previously asymptomatic degenerative condition. This finding is supported by substantial evidence in the record. It is undisputed that Leach had no history of back complaints prior to his March 10, 2007 injury. He reported chest and back injuries on March 14, 2007—just four days after his accident. A subsequent MRI revealed evidence of a possible fracture and/or traumatic injury to his lumbar spine. There was also evidence of muscle spasms supporting Leach’s complaints of pain.

While Cooper Tire asserts that there were no medical records indicating back pain for over ninety days after the accident, Leach testified that he had originally believed his back pain was related to his fractured ribs, until a nurse determined that his pain was actually radiating back pain. Both the ALJ and the Commission found Leach to be credible. Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission, and when there are contradictions in the evidence, it is within the Commission’s province to reconcile conflicting evidence and to determine the true facts. *Neal v. Sparks Reg’l Med. Ctr.*, 104 Ark. App. 97, 102, 289 S.W.3d 163, 167 (2008). On this record, there was substantial evidence to support the Commission’s finding that Leach had suffered a compensable back injury.

We next turn to the first issue on direct appeal: whether the Commission erred in finding

that Leach was not entitled to PPD benefits. The Commission found that Leach was not entitled to PPD benefits because his permanent impairment was caused solely by his degenerative condition. The ALJ's findings regarding this claim, which were adopted by the Commission, were as follows:

Dr. Long also assessed the claimant with a 14% whole body impairment rating due to the claimant's degenerative disc disease in the claimant's thoracic and lumbar spine. Dr. Long assessed the claimant with a 5% whole body impairment rating due to the claimant's thoracic degenerative condition at multiple levels and a 9% impairment rating with regard to the claimant's lumbar degenerative disease at multiple lumbar levels for a total of 14%. Dr. Long in his report uses the *AMA Guides to Impairment Disability*, Fourth Edition, Table 75, page 113, subparagraph 2, which states, "In Section C "unoperated on, stable, with medically documented injury, pain, and rigidity associated with moderate to severe degenerative changes on structural tests; includes unoperated on herniated nucleus pulposus with or without radiculopathy." Dr. Long in his October 15, 2009, report specifically used the "thoracic and lumbar degenerative disease numbers, which are 5% and 9% which equals 14%." Dr. Long, nor any other medical record states that the claimant had an unoperated on herniated nucleus pulposus with or without radiculopathy.

Dr. Long strictly based his permanent impairment rating on the claimant's degenerative disease numbers. I cannot find that the claimant's compensable back injury of March 10, 2007, was the major cause of the impairment assigned by Dr. Long in his October 15, 2009 report. Clearly, the claimant has degenerative disc disease which was aggravated by the March 10, 2007, incident; however, the March 10, 2007, incident was not the major cause of the claimant's degenerative disease impairment numbers outlined by Dr. Long.

Our workers' compensation statutes provide that "[p]ermanent benefits shall be awarded only upon a determination that the compensable injury was the major cause of the disability or impairment." Ark. Code Ann. § 11-9-102(4)(F)(ii)(a) (Supp. 2009). Further, "[i]f any compensable injury combines with a preexisting disease or condition or the natural process of aging to cause or prolong disability or a need for treatment, permanent benefits shall be payable for the resultant condition only if the compensable injury is the major cause of the permanent

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disability or need for treatment.” Ark. Code Ann. § 11-9-102(4)(F)(ii)(b) (Supp. 2009). “Major cause” is defined as “more than fifty percent (50%) of the cause.” Ark. Code Ann. § 11-9-102(14)(A) (Supp. 2009). An employer takes the employee as he finds him, and employment circumstances that aggravate preexisting conditions are compensable. *Heritage Baptist Temple v. Robinson*, 82 Ark. App. 460, 120 S.W.3d 150 (2003). We view the evidence in a light most favorable to the Commission’s decision and affirm the decision if it is supported by substantial evidence. *Grothaus v. Vista Health, LLC*, 2011 Ark. App. 130, ___ S.W.3d ___.

The Commission found that, because Dr. Long based his permanent impairment rating solely on Leach’s degenerative disease, it could not find that his compensable back injury was the major cause of his impairment rating. The Commission noted that, although Leach’s degenerative disease was clearly aggravated by the accident, the accident was not the major cause of the impairment numbers outlined by Dr. Long.

However, merely identifying a preexisting degenerative condition will not support a finding that Leach failed to prove major cause. It was also necessary for the Commission to determine whether the preexisting condition was symptomatic prior to the March 10, 2007 accident. We have previously held that the major-cause requirement is satisfied where a compensable injury aggravates an asymptomatic preexisting condition such that the condition becomes symptomatic and requires treatment. *Pollard v. Meridian Aggregates*, 88 Ark. App. 1, 193 S.W.3d 738 (2004). Here, there was no evidence presented that Leach had any physical limitations or restrictions prior to the March 10, 2007 accident related to his back. Nor was there any evidence disputing Leach’s testimony, which the Commission found credible, that,

prior to the accident, he had not suffered from back pain or that he was physically able to perform all his work duties. Yet, after the accident, there was substantial evidence that his condition had become symptomatic. Because his degenerative condition was asymptomatic prior to the accident and then symptomatic thereafter, the major-cause requirement was satisfied.

On remand, it is within the Commission's authority to assess its own impairment rating using the AMA Guides to the Evaluation of Permanent Impairment (4th ed. 1993), rather than rely solely on its determinations of the validity of the ratings assigned by a physician. *See Anaya v. Bryant*, 82 Ark. App. 273, 105 S.W.3d 811 (2003). We direct the Commission to reconsider its interpretation of Table 75, Section C, as being limited to cases involving herniated nucleus pulposi, to the extent its previous opinion may have done so.

The last issue on direct appeal is whether the Commission erred in denying Leach's claim for wage-loss disability benefits. The Commission did not reach this issue below because it did not find that Leach had sustained a permanent impairment as a result of his compensable injury. In order to receive wage-loss-disability benefits in excess of one's permanent physical impairment, a claimant first must prove by a preponderance of the evidence that he sustained permanent physical impairment as a result of a compensable injury. *Bio-Tech Pharmacal, Inc. v. Blouin*, 2010 Ark. App. 714, ___ S.W.3d ___; *Taggart v. Mid Am. Packaging*, 2009 Ark. App. 335, 308 S.W.3d 643. Because we reverse on the issue of anatomical impairment, the Commission, on remand, must now address Leach's argument that he is entitled to wage-loss-disability benefits.

SLIP OPINION

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Reversed and remanded on direct appeal; affirmed on cross-appeal.

GLOVER and MARTIN, JJ., agree.