Cite as 2012 Ark. App. 539

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA 12-214

Opinion Delivered September 26, 2012

RONNIE RENDELL APPELLANT	APPEAL FROM THE ARKANSAS WORKERS' COMPENSATION COMMISSION
V.	[NO. F910795]
ARKANSAS CHILDREN'S HOSPITAL, RISK MANAGEMENT RESOURCES, and DEATH & PERMANENT TOTAL DISABILITY TRUST FUND APPELLEES	AFFIRMED

WAYMOND M. BROWN, Judge

Appellant Ronnie Rendell appeals the decision of the Workers' Compensation Commission finding that he failed to prove that he was permanently and totally disabled and assigning a twenty-five-percent loss in wage-earning capacity in addition to his permanent anatomical impairment rating. We affirm.

Background

Appellant had been working at Arkansas Children's Hospital for approximately one year when, in November 2009, he slipped while cleaning in a storage room and sustained a compensable spinal-cord injury. He underwent fusion surgery on his neck and subsequent rehabilitation therapy in December 2009. On April 21, 2010, a functional capacity evaluation (FCE) was conducted. The disability analyst who performed the FCE concluded that

appellant was capable of performing work in the "light" category, which meant that he was able to occasionally (zero to thirty-three percent of the workday) lift eleven to twenty pounds, frequently (thirty-four to sixty-six percent of the workday) lift one to ten pounds, and on a constant basis (sixty-seven to one hundred percent of the workday), he could lift only negligible weight. The FCE analyst also found that appellant was capable of stooping, crouching, reaching, and sitting on a constant basis at work.

On April 26, 2010, Dr. Barry Baskin performed an independent medical evaluation and noted that although appellant had made significant progress, he continued to complain of weakness, muscle spasm, urinary urgency and frequency, erectile dysfunction, hand pain and weakness, and difficulty with walking long distances. Because appellant had undergone neck surgery, Dr. Baskin increased his initial impairment rating to twenty-nine percent, and this was accepted.

Appellant was found to have reached maximum medical improvement as of April 27, 2010. He then sought permanent total disability benefits or, in the alternative, wage-loss benefits in excess of his impairment rating. In June 2010, Edie Nichols of Systemedic Corporation performed a vocational evaluation on appellant. Nichols acknowledged that it would be challenging for appellant to return to work, not only because of his physical limitations but because he had no car or driver's license and, "[e]ven though he has a high school diploma, his true academic abilities may be far below the 12th grade level." However, she observed that the local adult-education center could test appellant's academic skills and provide remedial help with reading, writing, and math. In her report, Nichols concluded that

appellant could perform work tasks in the sedentary to light categories, and listed examples of jobs that would be within the physical limitations set forth in appellant's FCE: distributor of advertising material; inspector of packaging materials; dining-service worker; short-order cook; counter attendant at cafeteria; retail self-service store attendant; gatekeeper; assembly press operator; cell assembler; production assembly; and fast-food service trainee. Nichols noted, however, that appellant did not express any interest in returning to work, and opined that his recent approval for Social Security disability benefits "would likely be more incentive not to pursue return to work."

Nichols subsequently retired and transferred appellant's file to Heather Taylor, a vocational rehabilitation consultant at the same company. Taylor contacted appellant by telephone on September 29, 2010. Taylor stated in her report:

> When I talked with Mr. Rendell, he said that he was not interested in looking for a job because he did not think he was capable of working. He said he thought he could only work for about two hours per day–if he was allowed to take a break and lay down when needed. He said that he cannot walk or stand for more than about 30 minutes before he needs to lie down . . . . He said he does not have a driver's license . . . and couldn't drive anyway because he does not think he could use his leg properly to apply the brake . . . . He also told me that he was awarded SSDI about three months ago.

Taylor stated that because appellant was not interested in job-search assistance, was receiving Social Security disability benefits, and did not think he could work, she was instructed to close his file and did so.

A hearing was held before an administrative law judge (ALJ) on August 26, 2011. Appellant and Heather Taylor were the only two testifying witnesses. Appellant gave testimony that presented his symptoms and work limitations as being more serious than his

FCE would indicate. He stated that he continued to suffer from weakness, muscle spasms, radiating arm pain, urinary urgency and frequency, erectile dysfunction, hand pain and weakness, and difficulty walking long distances. He testified that before his injury he was extremely fit and active, but due to the continuing symptoms from his injury, he was incapable of any sustained activity lasting more than a couple of hours, at which time he would have to "crash." However, he also testified that he did all of his own cooking and cleaning and was able to exercise for a brief period each day. Appellant also testified that he had extremely poor reading and writing skills and that he had turned down ACH's offer of a sit-down job taking milk orders in the hospital because he would not be able to handle the paperwork. Appellant testified that he did not think he could work anymore. As for his work history, appellant testified that he had previously held various cooking and cleaning jobs.

Heather Taylor's testimony corresponded to her written report, although she did acknowledge that if appellant's limitations were as serious as he testified they were, it could be very difficult for him to find employment. In an August 30, 2012 opinion, the ALJ found that appellant was permanently and totally disabled, stating:

> The evidence of the record shows the claimant's ability to return to the work force is compromised by his significant injury affecting his ability to walk and causing pain, spasms, and bladder urgency. The claimant also lacks transferable skills, and his academic ability is lower than a high school education. He cannot return to manual labor which is most of his work experience. He has a significant permanent impairment rating and a valid Functional Capacity Evaluation[.] According to his physician, even if a job were found within his work restrictions at commensurate wages, he would only be able to work half a day.

The Commission performed a de novo review and reversed the ALJ's decision in a February 13, 2012 opinion, finding that appellant had failed to prove by a preponderance of the

evidence that he was permanently and totally disabled, but that he was entitled to benefits for a twenty-five-percent loss in wage-earning capacity over and above his permanent anatomical impairment rating. A timely notice of appeal was filed on February 16, 2012.

Standard of Review

In appeals involving claims for workers' compensation, we view the evidence in the light most favorable to the Commission's decision and affirm the decision if it is supported by substantial evidence.[1] When a claim is denied because the claimant has failed to show entitlement to compensation by a preponderance of the evidence, the substantial-evidence standard of review requires this court to affirm if the Commission's opinion displays a substantial basis for the denial of relief.[2] Substantial evidence exists if reasonable minds could reach the conclusion reached by the Commission.[3] The issue is not whether the appellate court might have reached a different result or whether the evidence would have supported a contrary finding; if reasonable minds could reach the result found by the Commission, the appellate court must affirm.[4]

Discussion

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[1]*Milton v. K-Tops Plastic Mfg. Co.*, 2012 Ark. App. 175, ___ S.W.3d ___.

[2]*Lee v. Alcoa Extrusion, Inc.*, 89 Ark. App. 228, 201 S.W.3d 449 (2005).

[3]*Id.*

[4] *Robinson v. Family Dollar Stores, Inc.*, 2011 Ark. App. 172.

Permanent and total disability is defined as the inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment.[5] The claimant has the burden of proving that he is unable to earn any meaningful wage.[6] When a claimant has been assigned an anatomical impairment rating to the body as a whole, the Commission has the authority to increase the disability rating, and it can find a claimant totally and permanently disabled based on wage-loss factors.[7] The Commission is charged with the duty of determining disability based upon a consideration of medical evidence and other matters affecting wage loss, such as the claimant's age, education, and work experience.[8] Other factors considered include the claimant's motivation to return to work, since a lack of interest or negative attitude toward returning to work impedes the assessment of a claimant's loss of earning capacity.[9]

In the instant case, the Commission found that although the evidence showed that appellant had sustained some wage-loss disability in addition to his permanent anatomical impairment, he had failed to prove by a preponderance of the evidence that he was permanently and totally disabled. In support of its ruling, the Commission cited the following evidence: appellant's FCE results; his refusal to accept help in finding a job; his refusal of a job

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[5]Ark. Code Ann. § 11-9-519(e)(1) (Repl. 2002).

[6] Ark. Code Ann. § 11-9-519(e)(2) (Repl. 2002).

[7]*Lee v. Alcoa Extrusion, Inc.*, 89 Ark. App. 228, 201 S.W.3d 449 (2005).

[8]*Id.*

[9]*Id.*

offer from ACH; the fact that appellant had never attempted to search for or apply for any job since his injury; and appellant's testimony that he takes care of his own home and is able to exercise, if briefly, each day.

We hold that the evidence cited in the Commission's opinion provided a substantial basis for denial of appellant's permanent-and-total disability claim. Although appellant gave testimony that his physical condition and mental abilities were so poor that he could not work in any capacity, that testimony was at odds with his FCE and vocational evaluation, which both indicated that he was capable of performing sedentary and light work.[10] Clearly, the Commission assigned greater weight and credibility to the evaluations, appellant's refusal of a sedentary job, and appellant's ability to engage in daily household activities and modest exercise. It is well settled that questions concerning the credibility of witnesses and the weight to be given their testimony are within the exclusive province of the Commission. In addition, there was no evidence that appellant could not find employment in or successfully perform any of the types of jobs listed in his vocational evaluation, not least of all because appellant never attempted to look for or apply for any job after his injury. This further supported the Commission's conclusion that appellant failed to prove permanent and total disability; that is, that he was incapable of earning any meaningful wage. Because the Commission's denial of appellant's claim was supported by substantial evidence, we affirm.

Affirmed.
ABRAMSON and HOOFMAN, JJ., agree.
Guy Davis, for appellant.
Friday, Eldredge & Clark, LLP, by: *Guy Alton Wade*, for appellee.

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[10]For example, appellant's FCE lasted four hours, and contrary to what his testimony would indicate, he was able to complete all the tests. After the FCE, appellant reported increased hand numbness but the same pain level he reported when the FCE began (three out of ten), and he told the analyst who performed the FCE that those symptoms were the same he experiences "twenty four seven." The analyst also noted that appellant walked with the same gait he had exhibited when he arrived.