

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA09-617

JOYCE WELCHER

APPELLANT

V.

DAVIS NURSING HOME and
GUARANTEE INSURANCE
COMPANY

APPELLEES

Opinion Delivered DECEMBER 9, 2009

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F602327, NO. F608011]

AFFIRMED

RITA W. GRUBER, Judge

This workers' compensation case arises from appellant Joyce Welcher's claims for additional benefits after she underwent surgery as treatment for compensable injuries she had sustained to her right shoulder. The first occurred on January 31, 2006, when Welcher, a certified nurse's assistant for appellee Davis Nursing Home, grabbed a patient who had been dropped while Welcher and a co-worker were lifting him. As a result of the injury, she was put on light-duty restrictions and was assigned the duty of sitting with patients. Her second compensable injury occurred in a July 11, 2006 attack by a combative Alzheimer's patient who wanted to go home: he struck her in the neck and shoulders when she intervened with his attempts to leave the building. Welcher was eventually diagnosed with a rotator-cuff tear of the right shoulder, and surgery was performed for it in late November the same year.

On March 21, 2008, an administrative law judge conducted a hearing on Welcher's

controverted claims for gradual-onset carpal tunnel syndrome, neck and back injuries, and temporary-total-disability benefits from September 20 through October 22, 2007. After evaluating the medical records and considering the testimony, the law judge ruled that Welcher had not proven by a preponderance of the credible evidence the compensability of her carpal tunnel syndrome or her current back and neck problems. The law judge also denied her claim for additional temporary-total-disability benefits, referring to her poor effort and symptom magnification when she underwent a functional-capacity evaluation. The Workers' Compensation Commission adopted and affirmed the decision of the law judge.

Welcher appeals the denial of her claims for neck and back injuries and for temporary total disability, bringing to our attention particular parts of the medical records and of her own testimony. She notes her testimony that she felt tingling and aching in her neck, shoulder, and back in the January 2006 incident; and that her right arm, neck, and back, bothered her more after July 11, 2006. She points out that her 2006 medical records contain the following: a medical diagnosis of upper thoracic muscle strain by Dr. Gerald Morris on March 13; Dr. Lester Alexander's notations of "palpable spasms of the trapezius and thoracic paravertabral muscles on the right side" on July 12, as well as a prescription for Flexeril the same day; and Dr. Alexander's July 26 continued assessment of "right shoulder, thoracic, and trapezius muscle strain (superimposed upon a previous shoulder injury)." As for her 2007 records, she notes that a February 2 cervical MRI showed abnormalities; Dr. Mark Stevens referred her to a neck specialist and a neurologist for neck and back pain on February 9, after he had performed surgery the previous November; Dr. Kevin Collins on September 20 recommended an MRI

of her neck and lumbosacral spine; and on the same date he noted her complaints of neck, right shoulder, lower back, and right leg pain. Without further specification, Welcher complains that the Commission disregarded the medical opinions of Drs. Lester and Stevens.¹

While it is true that the Commission may not arbitrarily disregard medical evidence or testimony by any witness, *Stone v. Dollar Gen. Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005), the appellate court must defer to the Commission's findings of the witnesses' credibility and the resolution of conflicting evidence, which is a question of fact. *Hargis Transp. v. Chesser*, 87 Ark. App. 301, 190 S.W.3d 309 (2004). We must review the evidence in the light most favorable to the findings of the Commission and affirm if they are supported by substantial evidence. *King v. City of Little Rock*, 2009 Ark. App. 733. Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Murphy v. Forsgren, Inc.*, 99 Ark. App. 223, 258 S.W.3d 794 (2007).

Compensation is in order when a preexisting injury is aggravated by a later compensable injury. *McMillan v. U.S. Motors*, 59 Ark. App. 85, 953 S.W.2d 907 (1997). The employer "takes the employee as he finds him," and employment circumstances that aggravate preexisting conditions are compensable. *Ford v. Chemipulp Process, Inc.*, 63 Ark. App. 260, 977 S.W.2d 5 (1998). The test for determining whether a subsequent episode is a recurrence or an aggravation is whether the subsequent episode was a natural and probable result of the first injury or was precipitated by an independent intervening cause. *Bearden Lumber Co. v. Bond*, 7 Ark. App. 65, 644 S.W.2d 321 (1983). If there is a causal connection between the primary

¹Welcher does not appeal the denial of her claim for carpal tunnel syndrome.

injury and the subsequent disability, there is no independent intervening cause unless the subsequent disability is triggered by activity on the part of the claimant that is unreasonable under the circumstances. *Guidry v. J & R Eads Constr. Co.*, 11 Ark. App. 219, 669 S.W.2d 483 (1984). Temporary total disability is that period within the healing period in which the employee suffers a total incapacity to earn wages. *Ark. State Highway and Transp. Dep't v. Breshears*, 272 Ark. 244, 613 S.W.2d 392 (1981).

In addition to the evidence upon which Welcher relies, the Commission noted her report of a lower back injury at work in May 2005, before the “rt. upper back” report on January 31, 2006, and the July 11, 2006 report for “upper shoulders.” The Commission noted that Welcher had been treated for “headaches, left shoulder and neck pain” on July 6, 2001, and had given a history of previous motor vehicle accident; that x-rays the same date showed calcification of C6; and that she had been prescribed medication and physical therapy for thoracic and L5-S1 strains after complaining of head, neck, and back pain on July 18, 2001. The Commission noted that she was treated for cervical and left-shoulder pain after another motor vehicle accident on December 3, 2004. It noted that she was excused from work and medication was prescribed for spasms after she reported “pulling something” at work on February 1, 2006; that she was to return to light duty on February 7, but this was extended until February 17 after she complained of pain around her right shoulder blade; and that February 22, 2006 x-rays of her back and right shoulder were normal. The Commission reviewed other visits to medical caregivers and noted the 2007 impression of Brent Sprinkle, D.O., who examined Welcher and reviewed a February 2006 MRI, that she had cervical and

lumbar strains as well as preexisting cervical and lumbar degenerative disc disease. Finally, it noted an EMG/NCV study of October 4, 2007, showing no evidence of radiculopathy; a return to light duty by Dr. David Collins on October 22, 2007; and Dr. Collins's February 2008 frustration in dealing with the insurance carrier.

Addressing the causal connection between the 2006 work injuries and Welcher's back injuries, the Commission found that her only lower back injury occurred in 2005, that medical records after the 2006 injury concerned the upper back or thoracic area, that she complained of lower back and right leg problems in 2007, and that her present claim was for lower back problems. Finding that her neck condition was not caused by a work accident, the Commission opined that the presence of degenerative disc disease suggested a chronic condition rather than acute injury and noted her previous neck injuries from motor vehicle accidents. The Commission denied the temporary-total-disability benefits on the basis of the functional-capacity evaluation.

The Commission thoroughly discussed Welcher's work activities, her medical history of pre-existing conditions, the functional-capacity evaluation, and her medical providers' various treatments, diagnoses, and opinions. We hold that the evidence as summarized by the Commission constitutes a sufficient basis for denying Welcher's claim that her back and neck problems were work-related and for denying benefits for temporary total disability. Therefore, we affirm the decision.

Affirmed.

MARSHALL and HENRY, JJ., agree.