

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA09-724

LISA DENNING,

APPELLANT

V.

WAL-MART ASSOCIATES, INC. and
CLAIMS MANAGEMENT, INC. ,
APPELLEES

Opinion Delivered December 9, 2009

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION,
[F713039]

REVERSED

KAREN R. BAKER, Judge

Appellant Lisa Denning appeals the decision of the Arkansas Workers' Compensation Commission denying her benefits, arguing that the Commission's finding that she had failed to prove by a preponderance of the evidence that she has a compensable injury supported by objective findings is not supported by substantial evidence. Her argument is well taken; accordingly, the Commission's decision is reversed.

Appellant began working in the appellee Wal-mart's bakery in August 2007. On December 5, 2007, she was standing on a ladder in a freezer stocking shelves when, as she was reaching for a box at the back of a shelf, another box began to fall. As she reached for the falling box to stop the fall, she twisted, almost falling from the ladder. She reported the incident and completed an accident report. The next day, December 6, she informed her

supervisors that her pain was not going away and requested medical treatment. Appellant completed more paperwork, was taken for a drug screen, and an appointment was made for her to be evaluated by Dr. Berestnev.

Dr. Berestnev diagnosed her with low back pain and left L5-S1 radiculopathy. Dr. Berestnev prescribed medications, exercises, and restrictions of no lifting more than twenty pounds and the avoidance of climbing ladders. X-rays taken by Dr. Berestnev revealed no fractures or dislocations. Appellant returned to work for appellee in the bakery and eventually she was placed in a job stocking shelves. Before her next scheduled visit with Dr. Berestnev, appellant sought medical treatment from the emergency room at Northwest Medical Center in Bentonville. She was diagnosed with a lumbosacral back strain and was prescribed medications. Appellant subsequently returned to Dr. Berestnev on December 13, 2007, at which time he indicated that appellant had pain out of proportion to her clinical findings. Dr. Berestnev ordered physical therapy and placed restrictions of no prolonged walking or repetitive bending.

On December 24, 2007, appellant again sought treatment in the emergency room and was again prescribed medication. On December 27, 2007, Dr. Berestnev completed a form indicating that he did not observe swelling in appellant's back at the time of his examination. Instead, he indicated that he based his diagnosis and the prescription medication on the patient's history and complaints.

On January 3, 2008, appellant was evaluated by Dr. Mathur for complaints of low back

pain. Dr. Mathur diagnosed appellant's condition as acute lumbago and ordered an MRI scan, which appellant has not undergone. Her last medical treatment occurred on April 24, 2008, when she received medication at the emergency room.

The Commission found that appellant did not have any objective findings of injury and specifically rejected appellant's argument that the prescription of Flexeril along with the after-care instructions from the Northwest Medical Center on December 9, 2007, and December 24, 2007, demonstrated that she had muscle spasms. It concluded that the notations of spasm in the preprinted after-care instructions did not correlate with the actual examination of appellant by emergency room personnel and Dr. Berestnev.

When reviewing a decision of the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the findings of the Commission and affirm that decision if it is supported by substantial evidence. *Crossett Sch. Dist. v. Gourley*, 50 Ark. App. 1, 899 S.W.2d 482 (1995). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Wright v. ABC Air, Inc.*, 44 Ark. App. 5, 864 S.W.2d 871 (1993). The issue is not whether we might have reached a different result or whether the evidence would have supported a contrary finding; even if a preponderance of the evidence might indicate a contrary result, if reasonable minds could reach the Commission's conclusion, we must affirm its decision. *St. Vincent Infirmary Med. Ctr. v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996). The Commission is required to weigh the evidence impartially without giving the benefit of

the doubt to any party. *Keller v. L.A. Darling Fixtures*, 40 Ark. App. 94, 845 S.W.2d 15 (1992).

The Commission also has the duty of weighing the medical evidence as it does any other evidence. *Roberson v. Waste Mgmt.*, 58 Ark. App. 11, 944 S.W.2d 858 (1997). The Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). When the Commission denies benefits upon finding that the claimant failed to meet his burden of proof, the substantial evidence standard of review requires that we affirm if the Commission's decision displays a substantial basis for denial of the relief. *Cooper v. Hiland Dairy*, 69 Ark. App. 200, 11 S.W.3d 5 (2000). See also, *Bingle v. Quality Inn*, 96 Ark. App. 312, 241 S.W.3d 271 (2006).

The determination of the credibility and weight to be given a witness's testimony is within the sole province of the Workers' Compensation Commission; the Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Cossey v. Gary A. Thomas Racing Stable*, 2009 Ark. App. 666, 344 S.W.3d 684. The Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. *Id.* Moreover, and importantly, the Commission is not bound by a doctor's opinion that is based largely on facts related to him

by the claimant where there is no sufficient independent knowledge upon which to corroborate the claimant's claim. *Id.*

It is clear that muscle spasms, even those detected by someone other than a physician, can constitute objective medical findings to support compensability. *Mays v. Alumnitec, Inc.*, 76 Ark. App. 274, 64 S.W.3d 772 (2001). In *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2002), our supreme court concluded that muscle spasms can constitute objective medical findings. The court went on to note that “[a] doctor would not prescribe medication directed to be taken ‘as needed for muscle spasm’ if he did not believe muscle spasms were existent.” *Id.* at 281, 33 S.W.3d at 171; *see also Fred’s, Inc. v. Jefferson*, 361 Ark. 258, 206 S.W.3d 238 (2005).

Following our supreme court’s precedent, we agree with appellant’s argument that the emergency room personnel’s prescribing of Flexeril for muscle spasms is sufficient to establish objective findings of an injury.

KINARD, J., agrees.

PITTMAN, J., concurs.