NOT DESIGNATED FOR PUBLICATION

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA 08-894

MARILYN RITCHIE
APPELLANT

V.

STEWART PROPERTIES, LLC, ET AL.
APPELLEES

Opinion Delivered March 11, 2009

APPEAL FROM THE ARKANSAS WORKERS' COMPENSATION COMMISSION
[NO. F406739]

REVERSED AND REMANDED

COURTNEY HUDSON HENRY, Judge

In this workers' compensation case, appellant Marilyn Ritchie sustained injuries to her right knee and lower back while in the employ of appellee Stewart Properties. Appellant appeals the decision of the Arkansas Workers' Compensation Commission, which affirmed and adopted the decision of the administrative law judge. By this decision, the Commission denied appellant's claim for permanent disability benefits; it determined the date that appellant reached the end of her healing periods; and it denied appellant's claim for additional medical treatment with regard to both injuries. For reversal, appellant contends that the Commission's findings are not supported by substantial evidence. We cannot decide the merits of this appeal because the Commission has not made adequate findings for us to review. Therefore, we reverse and remand for the Commission to make findings of fact.

Appellant began working for appellee in 2002 as the property manager of an apartment complex for the elderly. Appellant claimed that she injured her right knee and lower back

while performing general maintenance and yard work at the complex on March 19, 2004. Appellant maintained that she injured her right knee when moving a bag of concrete mix. Appellant also asserted that she injured her back while performing these activities, but she could not say how or specifically when it happened.

Appellee accepted the compensability of both injuries and sent appellant to Dr. W.R. McKiever for treatment. Dr. McKiever ordered an MRI of appellant's right knee, which revealed a tear in the posterior horn of the medial meniscus and a small focal tear along the anterior horn of the medial meniscus. Dr. McKiever referred appellant to Dr. John Lytle, a surgeon, who performed arthroscopic surgery on appellant's right knee on June 22, 2004.

On June 30, 2004, appellant returned to Dr. Lytle for a post-operative examination. In his office note of that date, Dr. Lytle opined that appellant would require total, right knee-replacement surgery, but the doctor's plan was to forego that operation as long as possible. On August 25, 2004, nine weeks after the surgery, Dr. Lytle stated that appellant's knee was stable and that she had reached maximum medical improvement. He assigned for the knee a twenty-two-percent impairment rating on that date. Appellee accepted that rating and began the payment of permanent partial disability benefits with regard to appellant's right knee.

On September 16, 2004, appellant returned to Dr. McKiever with complaints of pain in her right hip and lower back. Dr. McKiever scheduled an MRI of the lumbar spine and a bone scan. The radiologist described the MRI as being borderline normal and wrote that the study showed subtle findings of a probable, minimal posterolateral disc bulge at L4-5. The bone scan revealed evidence of increased activity in the lower lumbar spine at L4-5, which

was "thought to be due to degenerative changes." Based on these studies, Dr. McKiever diagnosed a bulging disc at L4-5 and arthritis, and he referred appellant to Dr. Eric Akin for a surgical consultation.

Dr. Akin treated appellant on October 20, 2004. At this office visit, appellant reported progressive and worsening low back pain since she picked up pine needles in March 2004. She described the pain as constant and as radiating down her left leg. She also complained of numbness in her legs and feet. On November 29, 2004, Dr. Akin reviewed the MRI of appellant's lumbar spine, which he said revealed moderate degenerative changes at L5-S1. He offered a diagnosis of moderate degenerative disc disease, most prominent at L5-S1. Dr. Akin did not recommend surgery, and he referred appellant to Dr. Thomas Hart, a pain specialist, for an evaluation and for epidural steroid injections.

Appellant presented to Dr. Hart for an initial evaluation on December 9, 2004. Dr. Hart reviewed the MRI of appellant's lumbar spine and said that it showed minimal disc protrusions and slight disc dissections at L4-5 and L5-S1. He opined that appellant's pain stemmed from either the facet joints or a disc. He planned to proceed with diagnostic facet injections, and if appellant obtained relief from those injections, he felt that she would be a candidate for radiofrequency denervation. Dr. Hart also stated that, if the facet injections did not significantly reduce appellant's pain, it would be appropriate to perform a discogram to determine if any of her pain was discogenic in origin.

Appellant also saw Dr. Edward Saer on December 9, 2004. Dr. Saer commented that the MRI of appellant's lumbar spine was essentially unremarkable, as it showed only mild

dissection at L5-S1 and perhaps facet hypertrophy at L4-5 and L5-S1. He did not believe that surgery was a viable option.

Dr. Hart administered a series of facet injections on December 28, 2004, and he performed radiofrequency procedures on January 13 and January 27, 2005. On January 13, Dr. Hart wrote in an office note that appellant's pain improved after the first series of facet injections, but he stated that there was no cure for appellant's back and that the radiofrequency procedures were only for the management of appellant's pain.

Appellee's insurer sent appellant to Dr. Darin Wilbourn for a second-opinion evaluation on March 14, 2005. The insurer asked Dr. Wilbourn to answer a series of specific questions, to which Dr. Wilbourn responded that appellant was not in need of further treatment for her knee or her back problems and that appellant had reached maximum medical improvement for both injuries. He recommended a functional capacity evaluation to determine appellant's capabilities before assessing a permanent-impairment rating.

Appellant returned to Dr. Saer on March 29, 2005. From this office visit, Dr. Saer noted that appellant was complaining of pain in a different area. His impression was that appellant suffered from "lumbar spondylosis/degenerative disc disease at L4-5." He attributed the new lumbar pain to a soft-tissue problem and opined that the pain did not appear to be discogenic in origin. Dr. Saer did not believe that appellant needed surgical treatment, and he agreed with Dr. Wilbourn that appellant had reached maximum medical improvement with regard to her back.

Appellant underwent a functional capacity evaluation on April 20, 2005. The evaluator noted that appellant did not put forth reliable effort and that she was capable of performing light-duty work. Appellant returned to Dr. Wilbourn on April 27, 2005, for a follow-up evaluation. His impression of that date was that appellant had chronic low back pain secondary to bilateral lumbar facet joint spondylosis. Dr. Wilbourn opined that appellant could return to work with restrictions that included no lifting, pulling, or pushing over twenty pounds. He also assessed a five-percent impairment rating for her back condition.

Appellant returned to Dr. Hart on May 17, 2005. On this date, Dr. Hart noted that the previous radiofrequency procedures documented multi-level spondylosis but that the procedures did not alleviate all of appellant's pain. He recommended a discogram to determine if appellant's continuing complaints of pain were discogenic in origin. In this regard, Dr. Hart stated that "intervertebral disc disruption or painful disc was not the same thing as degenerative changes." He asked appellant to consult Dr. Lytle about her knee, and he formed a plan to perform a discogram once her knee problem had resolved.

Appellant presented to Dr. Lytle again on June 14, 2005. In an office note, Dr. Lytle reported that appellant had a new problem with her knee on the right side, and he stated, once again, that he advised delaying the total knee replacement as long as possible. Dr. Lytle opined that appellant had osteoarthritis in her right knee, but he stated that this condition "preexisted her injury, but certainly aggravated this and has caused this to be progressive."

Dr. Hart performed a discogram on December 22, 2005. This study produced normal results at the L4-5 and L3-4 levels, but the study revealed a significant intervertebral disc disruption at L5-S1. Dr. Hart referred appellant to Dr. Akin to discuss surgical options. On

December 29, 2005, Dr. Akin examined appellant and noted that she had degenerative changes and concordant pain at the L5-S1 level, indicating that she had discogenic pain as well. However, he advised against surgery at that time due to appellant's morbid obesity.

Appellant saw Dr. Hart again on February 9, 2006. He performed another radiofrequency treatment on the right side and repeated the procedure on the left side several weeks later. Dr. Hart hoped the treatment would provide relief so that appellant could lose weight, which would enable her to have fusion surgery on her lower back at L5-S1.

Appellant returned to Dr. Hart for radiofrequency treatment on July 13, 2006. For the first time, Dr. Hart also administered epidural steroid injections in an L5 distribution for the treatment of the abnormal disc at L5-S1. Appellant underwent additional radiofrequency treatments on August 3, 2006, and November 1, 2006.

In this case, appellant presented several claims for litigation. She contended that she was permanently and totally disabled as a result of her injuries. In the alternative, she claimed entitlement to wage-loss disability benefits in excess of the five-percent impairment rating assigned by Dr. Wilbourn. Appellant also sought a determination as to when her healing periods ended for the purpose of receiving temporary total disability benefits. Finally, appellant claimed that she was entitled to further medical benefits with regard to the treatment of her back injury, as well as her knee injury, including a total knee replacement.

In affirming and adopting the opinion of the administrative law judge, the Commission denied appellant's claim for any permanent benefits, based on a finding that appellant's work-related back injury was not the major cause of her disability. The Commission also rejected the five-percent impairment rating assigned by Dr. Wilbourn and found that appellant was

capable of performing light-duty work, based on the functional capacity evaluation and Dr. Wilbourn's opinion that appellant could return to work with restrictions. The Commission further determined that the healing period for appellant's knee injury ended on August 25, 2004, based on Dr. Lytle's opinion that appellant had reached maximum medical improvement for her knee on that date. The Commission also found that appellant reached the end of the healing period for her back on March 14, 2005, based on Drs. Wilbourn and Saer's opinions that she achieved maximum medical improvement on that date. Finally, the Commission found that appellant was entitled to no further medical benefits for either her knee or back after the healing periods ended for her injuries. Appellant argues on appeal that none of the Commission's findings are supported by substantial evidence. We are not able to reach the merits of appellant's arguments because the Commission did not make sufficient findings with regard to appellant's claims for additional medical treatment.

The Commission is a fact-finding body, not an appellate court. *See Hill v. Baptist Med. Ctr.*, 74 Ark. App. 250, 48 S.W.3d 544 (2001). The Commission is charged with the duty to make and enter findings of fact and rulings of law. *Excelsior Hotel v. Squires*, 83 Ark. App. 26, 115 S.W.3d 823 (2003). The Commission's findings must contain all of the specific facts relevant to the contested issue or issues so that the reviewing court may determine whether the Commission has resolved these issues in conformity with the law. *Hill*, *supra*. When the Commission fails to make specific findings on an issue, it is appropriate that the case be reversed and remanded for the Commission to make such findings. *Squires*, *supra*; *Wright v. American Transp.*, 18 Ark. App. 18, 709 S.W.2d 107 (1986).

Workers' compensation law provides that an employer shall provide the medical services that are reasonably necessary in connection with the injury received by the employee. Ark. Code Ann. § 11-9-508(a) (Supp. 2007). A claimant may be entitled to ongoing medical treatment after the healing period has ended if the treatment is geared toward management of the injury. *Patchell v. Wal-Mart Stores, Inc.*, 86 Ark. App. 230, 184 S.W.3d 31 (2004).

In this case, the Commission denied appellant's claim for ongoing medical treatment with regard to the knee injury, which included knee-replacement surgery, based solely on the determination that appellant's healing period had ended. The Commission made no findings whatsoever to support the conclusion that any treatment past that date was not reasonable and necessary for the treatment of appellant's compensable knee injury. Likewise, the Commission denied benefits for additional medical treatment of appellant's back based on a finding that all of the treatment after the healing period concluded was for the treatment of a degenerative back condition that was not related to appellant's compensable injury. The Commission did not set out the specific facts to support that conclusion. Thus, in both instances, the Commission stated conclusions without recounting the facts it relied upon to reach those conclusions. In the absence of the required findings of fact, we cannot conduct an appropriate review of the Commission's decision, and we reverse and remand for the Commission to make findings of fact in support of its decision.

Reversed and remanded.

HART and GLOVER, JJ., agree.