

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA08-1153

DEBRA FRANKLIN

APPELLANT

V.

WALMART STORES, INC. AND
CLAIM MANAGEMENT, INC.

APPELLEES

Opinion Delivered April 8, 2009

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F606039]

AFFIRMED

RITA W. GRUBER, Judge

Debra Franklin appeals the decision of the Arkansas Workers' Compensation Commission denying her request for benefits related to a back injury. The Commission, affirming and adopting the decision of the administrative law judge, found that a preponderance of the credible evidence failed to establish that Ms. Franklin sustained a compensable injury to her back. Ms. Franklin contends on appeal that the Commission's decision is not supported by substantial evidence and should be reversed. We disagree and affirm the decision of the Commission.

Under Arkansas Code Annotated section 11-9-102(4)(A)(i) (Supp. 2007), the claimant has the burden of proving that the injury arose out of and in the course of her employment, was caused by a specific incident, and is identifiable by time and place of occurrence. Where, as here, a claim has been denied because of the claimant's failure to meet her burden of proof,

the substantial-evidence standard of review requires that we affirm if the Commission's opinion displays a substantial basis for the denial of relief. *Neal v. Sparks Reg'l Med. Ctr.*, 104 Ark. App. 97, ___ S.W.3d ___ (2008). We view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings and affirm if they are supported by substantial evidence, i.e., evidence that a reasonable person might accept as adequate to support a conclusion. *Singleton v. City of Pine Bluff*, 97 Ark. App. 59, 244 S.W.3d 709 (2006).

Ms. Franklin contended at a hearing before the law judge that she sustained a compensable injury to her back on May 11, 2006, while standing on a ladder handling stock. She stated that she felt a "pop" and a sharp pain in her back. Approximately twenty minutes later, she felt another "pop." She finished the assigned task and then, she testified, she told the department manager, Amanda Leroux, that she had hurt herself on the ladder. She also said that she told a co-employee, Wanda, that she had hurt her back. She conceded that she did not request medical services or formally report the injury, though she knew the proper procedures to do so.

She then testified that she was working on the ladder again on May 12, 2006, when she felt another "bad pop" and pain in her back. She resumed her work and finished her shift. Once again, she testified that she told "someone in management" about the incident, but conceded that she did not file a formal report or request medical treatment. She testified that on Monday, May 15, 2006, she went to work and told the first manager she met, "I hurt myself" or "I am hurting" and that she was going to the doctor. However, she could not

recall the name of the manager or whether she told the manager that she had injured herself at work.

Amanda Leroux testified that she did not remember Ms. Franklin telling her in early May 2006 about the incident on the ladder. She said that she did recall Ms. Franklin saying that her hip was hurting one day. Ms. Leroux did not remember when it occurred but testified that Ms. Franklin mentioned it only once and did not say anything about how or where it occurred. Ms. Leroux also testified that Ms. Franklin worked until her “assigned time was up” (Ms. Franklin was working at the store on a temporary basis) and, though she asked to stay longer, her request was denied.

Elizabeth Lem, the personnel manager, testified that on May 15, 2006, Ms. Franklin came to see her about a payroll matter and mentioned that she had been to a chiropractor for her back. However, when Ms. Lem asked her how she had injured her back, Ms. Franklin said that she “really did not know” and that it had been a problem for a long time. Ms. Lem testified that Ms. Franklin did not report any employment-related injury to her, request medical treatment, or request that an incident or accident report be completed.

The law judge, whose findings were adopted by the Commission, found that Ms. Franklin’s testimony was not sufficiently credible to prove the existence of a causal relationship between medically established and objectively documented physical damage or defects and a specific incident related to her employment. The law judge noted that, while Ms. Franklin testified that she told various people at work about the incident, she did not present testimony of any of the co-employees or managers to whom she allegedly reported

her difficulties. The two employees who did testify, Ms. Leroux and Ms. Lem, denied that Ms. Franklin mentioned a work-related injury. Further, the law judge stated that, while it was apparent from the evidence that Ms. Franklin was aware of the appropriate procedures for reporting an employment-related injury, she did not follow any of these procedures until after she learned of the severity of her injury following the MRI, performed on May 23, 2006.

The law judge also noted that none of Ms. Franklin's initial treating physicians recorded her injury as work related, in spite of Ms. Franklin's insistence that she told them it was. The records of the Clouse Chiropractic Clinic, where Ms. Franklin initially sought treatment, indicated on May 15, 2006, that Ms. Franklin had a history of back problems and that she had been "playing with a baby last weekend." The records of the second treating physician, Dr. George Tompkins, dated May 24, 2006, made no mention of any employment-related accident or event. Indeed, the first mention of any employment-related incident appears on May 26, 2006, when Ms. Franklin reported a job-related injury to her employer and requested medical treatment. Further, the law judge found that the objectively documented medical evidence involving Ms. Franklin's lumbar spine showed an injury that appeared to be essentially degenerative in nature and could have been caused simply by the aging process or in conjunction with the stress or trauma of day-to-day life.

Determinations of credibility and the weight to be given the testimony are within the exclusive province of the Commission. *Powers v. City of Fayetteville*, 97 Ark. App. 251, 248 S.W.3d 516 (2007). Here, the Commission determined that Ms. Franklin's testimony

regarding how she injured her back was not credible. Viewing the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings, we hold that the Commission's findings are supported by substantial evidence and therefore its opinion displays a substantial basis for the denial of relief.

Affirmed.

GLOVER and MARSHALL, JJ., agree.