

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA 09-698

HUONG B. NGUYEN

APPELLANT

V.

FM CORPORATION and S.B.
HOWARD & COMPANY

APPELLEES

Opinion Delivered NOVEMBER 18,
2009

APPEAL FROM THE WORKERS'
COMPENSATION COMMISSION,
[NO. F613876]

REVERSED AND REMANDED

JOHN B. ROBBINS, Judge

Appellant Huong Nguyen appeals a decision by the Workers' Compensation Commission denying his request for compensation concerning a workplace event on November 9, 2006, wherein he claimed he hurt his back while performing work for appellee F.M. Corporation.

Our standard of review is well settled. We view the evidence in a light most favorable to the Commission's decision and affirm if it is supported by substantial evidence. *Deffenbaugh Indus. v. Angus*, 313 Ark. 100, 852 S.W.2d 804 (1993). Substantial evidence is that relevant evidence which a reasonable mind might accept as adequate to support a conclusion. *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). Where, as here, the Commission denies benefits because it determines that the claimant has failed to meet the burden of proof, the substantial-evidence standard of review requires us to affirm if the

Commission's decision displays a substantial basis for the denial of relief. *McMillan v. U.S. Motors*, 59 Ark. App. 85, 953 S.W.2d 907 (1997). We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions of the Commission. *ERC Contr. Yard & Sales v. Robertson*, 335 Ark. 63, 977 S.W.2d 212 (1998).

These rules insulate the Commission from judicial review because it is a specialist in this area and we are not. See *Wade v. Mr. C. Cavanaugh's*, 25 Ark. App. 237, 756 S.W.2d 923 (1988). However, a total insulation would obviously render our function in these cases meaningless. *Boyd v. Dana Corp.*, 62 Ark. App. 78, 966 S.W.2d 946 (1998); *Boyd v. Gen. Indus.*, 22 Ark. App. 103, 733 S.W.2d 750 (1987).

Appellant asks us to hold that there was no substantial evidence to support the Commission's finding that he failed to prove by a preponderance of the evidence that he hurt his back at work on November 9, 2006. The Administrative Law Judge (ALJ) and the Commissioners who affirmed and adopted the ALJ decision found that appellant was inconsistent whether he did or did not suffer from back pain prior to the date in question. Therefore, they found that appellant failed to prove that the medical care was for anything other than a pre-existing condition unrelated to his work. We disagree. We so hold because even if appellant suffered from prior back pain and had degenerative changes in his spine, he undisputedly suffered a dramatic onset of symptoms necessitating medical care and ultimately surgery.

Appellant, a Vietnamese man in his fifties, worked as a painter for appellee for more than twenty years prior to the incident in question. Appellant used a pressurized paint gun on the company's production line. On the morning of November 9, 2006, appellant testified that he had squatted down for over a half hour cleaning the paint gun when he stood up, immediately feeling the onset of pain in his low back radiating into both feet. Appellant asked a co-employee to inform a supervisor. Appellant was taken by ambulance to St. Mary's Hospital emergency room in Rogers, Arkansas.

Due to language barriers, emergency personnel interpreted appellant's complaints of radiating chest pain as a possible heart attack. Appellant was treated for that, but that was eliminated as a cause of the incident. Appellant was treated in tandem for low back pain complaints, and an MRI revealed degenerative changes from the thoracic to lumbar spine and significant spinal stenosis, more prominently in the lumbar level. Appellant was given conservative care for his back pain during his three-day in-patient stay, including steroid injections. His authorized treating physician, Dr. Gary Moffitt, opined that appellant suffered a right sacroiliac strain superimposed on degenerative disc disease and osteoarthritis, evidenced by spasming. Physical therapy, anti-inflammatory medication, and narcotic pain medications were prescribed but resulted in little success.

Because appellant's pain persisted, surgery was performed on April 25, 2007, to correct high-grade lumbar canal stenosis at L4-L5 and moderate canal stenosis at L3-L4. The operative note evidenced the laminectomies and facetectomies at L3-L4 and L4-L5 along with

fusion at L4-L5. Although diagnostic studies suggested the possibility of a herniation, the post-surgical report stated a diagnosis of canal stenosis without disc protrusion. Appellant healed from his surgery with some improvement in his condition. Because his employer resisted the bulk of his claim beyond basic medical care, the claim was pursued through administrative channels.

The ALJ found the evidence to be in conflict about his history of back pain, or lack thereof. Some answers in deposition were different than answers at the hearing. The ALJ noted that it was necessarily due in part to the language differences but that the burden was appellant's to show that his back injury was a work-related aggravation and not purely a pre-existing injury. The ALJ found that appellant failed in his burden of proof, which was affirmed and adopted by a majority of the Commissioners. We reverse and remand because substantial evidence does not support the findings and conclusions of the Commission.

In workers' compensation law, an employer takes the employee as he finds him, and employment circumstances that aggravate pre-existing conditions are compensable. See *Heritage Baptist Temple v. Robison*, 82 Ark. App. 460, 120 S.W.3d 150 (2003). An aggravation of a pre-existing non-compensable condition by a compensable injury is, itself, compensable. *Oliver v. Guardsmark*, 68 Ark. App. 24, 3 S.W.3d 336 (1999). An aggravation, being a new injury with an independent cause, must meet the definition of a compensable injury in order to establish compensability for the aggravation. *Farmland Ins. Co. v. Dubois*, 54 Ark. App. 141, 923 S.W.2d 883 (1996).

Cite as 2009 Ark. App. 775

Here, the undisputed evidence demonstrated that appellant had long-standing degenerative conditions for which he had never before sought professional medical care, until November 9, 2006. Viewed most favorably to the employer, appellant stated that he treated minor pain and soreness, either for the lower or upper back, with Tylenol at some points in time prior to November 9, 2006, but he missed no work. Appellant was diagnosed with a strain superimposed upon his degenerated spine, evidenced objectively by persistent spasms. Appellant was treated with conservative care until surgical intervention relieved much of appellant's suffering. There was no other conclusion to be drawn but that appellant suffered an aggravation of his pre-existing conditions at work. To find otherwise is simply not supported by substantial evidence of record. *Compare Parker v. Atlantic Research Corp.*, 87 Ark. App. 145, 189 S.W.3d 449 (2004).

We reverse and remand for consistent proceedings before the Commission.

VAUGHT, C.J., and HART, J., agree.