

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA10-61

RYAN STEVENS

APPELLANT

V.

MID-SOUTH MIXERS, INC. and AIG
CLAIM SERVICES, INC.

APPELLEES

Opinion Delivered June 23, 2010

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F809107]

REVERSED AND REMANDED

JOSEPHINE LINKER HART, Judge

Appellant, Ryan Stevens, appeals from the Arkansas Workers' Compensation Commission's determination that he failed to prove by a preponderance of the evidence that he sustained a work-related injury. Further, appellant challenges the Commission's alternative holding that he failed to give notice of a work-related injury, thus relieving appellees of responsibility for the providing of benefits before appellant's report of the injury. We reverse and remand the Commission's decision, as the Commission arbitrarily disregarded evidence on the issue of whether the injury was work related.

Appellant's job involved sandblasting. According to appellant, on September 4, 2008, a Thursday, he was hurting in his shoulder, which he reported to William Sykes, the owner of appellant's place of employment. Appellant further testified that he had cramps and pain in his shoulder the week before, but he attributed it to dehydration. Sykes testified that appellant had complained of cramps at work, but Sykes associated it with dehydration. He

further testified that appellant never complained about his shoulders. On September 9, 2008, a Tuesday, appellant sought treatment at a clinic. Appellant was immediately hospitalized, and ultimately, he was diagnosed with deep-vein thrombosis.

Appellant sought workers' compensation benefits. In denying compensability, the Commission stated that appellant admitted that when he left work on September 4, 2008, he complained neither to Sykes nor to the company's receptionist about a work-related injury. The Commission further noted that he did not report a work-related problem until he was released from the hospital. The Commission concluded that the medical records were inconsistent with a work-related injury. It noted that reports from September 9, 2008, indicated that appellant's right arm and shoulder started hurting over the weekend, that he awoke on the day of the report with pain and swelling, and that he reported redness, swelling, pain, and stiffness in his right arm for the past three days. A medical report from September 10, 2008, indicated that appellant had right upper extremity pain and swelling and redness for approximately three days prior to presentation; that he denied any precipitating injury or traumatic event; that his shoulder began to hurt on Saturday and he just thought that he slept on it wrong; and that on Monday or Tuesday it began to swell.

After considering this evidence, the Commission concluded that appellant's problems started on the Saturday before he sought medical treatment on September 9, 2008, and appellant had not worked since September 4, 2008. The Commission found that appellant failed to prove by a preponderance of the evidence that he sustained a compensable injury. Specifically, it found, "It is clear from the medical records that the claimant's problems started

after he slept on his arm wrong, not in August while the claimant was working.”

Appellant challenges this finding on appeal. He observes that, although not mentioned by the Commission, a physician’s report dated September 23, 2008, described appellant’s various job duties and noted that appellant had presented with deep-vein thrombosis and swelling in his right arm with suspected thoracic outlet syndrome or effort thrombosis. The physician further noted that this was a new symptomology for appellant. The physician concluded, “This history is consistent with the diagnosis of effort thrombosis or Paget-Schroetter syndrome.” On September 30, 2008, a second physician opined, “I think it is clear that he has subclavian vein thrombosis. He has had an underlying thoracic outlet syndrome that was aggravated by repetitive arm motions and use of air-driven tools at work. I think this is clearly a form of the Paget-Schroetter syndrome.” Appellant asserts that the Commission arbitrarily disregarded these medical opinions when it found that appellant failed to prove he sustained a compensable injury.

To receive workers’ compensation benefits for a specific-incident injury, a claimant must establish that the injury arose out of and in the course of employment and was caused by a specific incident that is identifiable by time and place of occurrence. Ark. Code Ann. § 11-9-102(4)(A)(i) (Supp. 2009). We review decisions of the Commission to see if they are supported by substantial evidence, which is relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Barnes v. Greenhead Farming*, 101 Ark. App. 129, 270 S.W.3d 873 (2008). If reasonable minds could reach the result reached by the Commission, we affirm. *Id.* But while the Commission weighs conflicting medical evidence,

the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. *Roberts v. Whirlpool*, 102 Ark. App. 284, 284 S.W.3d 100 (2008).

Here, the Commission, without mentioning the opinions of the two physicians, opined that appellant suffered from deep-vein thrombosis because he “slept on his arm wrong.” The medical records reveal, however, that appellant merely thought that he slept on his arm wrong. The Commission does not point to any medical evidence to support its conclusion that appellant’s condition could result from him sleeping on his arm wrong. Nor does it reject appellant’s work history or the symptomology given to appellant’s physicians.

The Arkansas Supreme Court has acknowledged that medical proof of causation is not required in every case.

The plethora of possible causes for work-related injuries includes many that can be established by common-sense observation and deduction. To require medical proof of causation in every case appears out of line with the general policy of economy and efficiency contained within the workers’ compensation law. To be sure, there will be circumstances where medical evidence will be necessary to establish that a particular injury resulted from a work-related incident but not in every case.

Wal-Mart Stores, Inc. v. VanWagner, 337 Ark. 443, 447, 990 S.W.2d 522, 524 (1999). Here, there was no common-sense observation and deduction regarding causation; it was merely appellant’s guess that he slept on his arm wrong. Further, there was no medical proof that appellant’s injury was caused by him sleeping on his arm wrong. Given that the Commission’s decision to deny benefits turned on its affirmative finding that the deep-vein thrombosis was caused by appellant sleeping on his arm wrong, we conclude that substantial evidence does not support the Commission’s decision to deny benefits on this basis, as reasonable minds

could not reach this result. Moreover, the Commission failed to consider medical evidence suggesting another cause. Thus, we must conclude that the Commission arbitrarily disregarded medical evidence.

We acknowledge that a claimant's injury must be attributable to a particular, specific incident. *Mack-Reynolds Appraisal Co. v. Morton*, 2010 Ark. App. 142, 375 S.W.3d 6. There were, however, two medical reports on causation, both supporting appellant's contention that the deep-vein thrombosis was work related, which the Commission failed to consider when it found that appellant's injury was not caused by a work-related incident. We may fairly contrast this case with *Weavers v. Nabors Drilling*, 98 Ark. App. 161, 253 S.W.3d 30 (2007), in which we affirmed the denial of compensation where the claimant had no evidence of causation by a specific incident, medical or otherwise. As we noted there, the claimant asked "this court to infer that his injury was caused by his employment—something we are not permitted to do." *Id.* at 164, 253 S.W.3d at 33. Here, there is medical evidence on causation available to the Commission to consider on remand.

The Commission further found that because appellant failed to notify appellees of a work-related injury until after his hospitalization, appellees prevailed on their notice defense. In certain circumstances, an employer may not be responsible for benefits prior to the receipt of the employee's report of the injury. Ark. Code Ann. § 11-9-701(a)(1) (Repl. 2002). We remand this issue as well, as the Commission must consider, in light of all the evidence, whether appellant "had no knowledge that the condition or disease arose out of and in the course of employment," as in such circumstances, the notice would not bar the claim. Ark.

Cite as 2010 Ark. App. 519

Code Ann. § 11-9-701(b)(1)(B).

Reversed and remanded.

GLOVER and HENRY, JJ., agree.