

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA10-1030

MARY ROBINSON

APPELLANT

V.

FAMILY DOLLAR STORES, INC., and
RISK ENTERPRISE MANAGEMENT

APPELLEES

Opinion Delivered March 2, 2011

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F510706]

AFFIRMED

DAVID M. GLOVER, Judge

On October 4, 2005, appellant, Mary Robinson, suffered a compensable injury when a forklift ran over the top of her right foot. At the time of the injury, Robinson lost her balance and landed on her left side. She was treated at Crittenden Memorial Hospital, where the laceration on the top of her foot was surgically repaired, and she was diagnosed with fractures at the base of her second, third, and fourth metatarsals. Robinson was treated by Dr. Riley Jones and was off work for a period of time after the accident; she was released to light duty on November 28, 2005, and appellee Family Dollar accommodated her light-duty restrictions. She was released to regular duty on February 2, 2006, and returned to the position she held prior to her accident for two to three years; however, it was her testimony that when she returned to regular duty, she could only work for about fifteen minutes and then she had to go to the restroom and sit down for an

hour because her feet would swell and she would lose her balance. Robinson said that she relied on her co-workers to assist her, and that her employer was aware of that fact, which was disputed by the Family Dollar human-resource manager.

Robinson continued to seek medical treatment from various medical professionals for her right-foot pain, and she also began to experience pain in her knees, especially in her right knee. Although Robinson admitted that she had a non-work-related injury to her knee in December 2007, she said that she began missing work in December 2007 not because of her knee problem, but because of her hip problem, which she believed to be work related. Dr. Grady Collum released Robinson to light-duty work on January 8, 2008, based upon her complaints of knee pain and the x-ray of her knee showing exostosis from the medial femoral condyle, but Family Dollar refused to accommodate that restriction because it did not consider it to be work related. Eventually, Robinson ceased working for Family Dollar; Robinson contended that she was fired, but Family Dollar contended that she quit.

Robinson continued to seek medical treatment for her foot, knees, left hip, and back. At the hearing, she stated that she was still having soreness and pain in her left hip and could not sleep on that side. She said that her left-hip problems began about two years after her accident, and that she had done nothing to injure herself other than her compensable injury.

Robinson was seen by Dr. Tewfik Rizk at the Pain Management Clinic, who was of the opinion that Robinson might be suffering from avascular necrosis in her left hip and

possibly reflex sympathetic dystrophy (RSD) in her right foot.¹ After x-rays and other diagnostic testing, Dr. Rizk was of the opinion that Robinson was suffering from avascular necrosis, but he recommended an MRI of her left hip to be certain. Dr. Rizk explained in his deposition that avascular necrosis is a phenomenon that occurs if the circulation is disturbed around the hip joint; when the circulation slows down gradually, the head of the femur becomes soft because there is no nutrition going to it. He stated that the hipbone is the most common place for avascular necrosis, and that it can occur from things such as direct or indirect trauma; large doses of steroids; cortisone treatment; and sudden changes in pressure, such as deep diving for a long time. He said that avascular necrosis might take a year to present because it progresses slowly and it is easily misdiagnosed until later stages, and many times people are not diagnosed with it until years later due to the slowly progressing pathology. He said that based on the history given to him by Robinson, there was indirect trauma to her left hip when she attempted to get out from under the forklift and fell on her left side; however, he admitted that that was speculation on his part and he was basing his opinion on the history given to him by Robinson. Dr. Rizk's clinical impression was that Robinson most probably had avascular necrosis in her left hip; that he recommended an MRI because it would show avascular necrosis; that there was nothing unusual about Robinson being asymptomatic for a time; that Robinson should not be up

¹Dr. Rizk stated in his deposition that he was unaware when he first saw Robinson that a triple-phase bone scan had been performed and the results were negative for RSD, but that he learned of those results on Robinson's next visit.

and down on her feet; that if she had avascular necrosis, he would refer her to an orthopedic surgeon; and that Robinson had not yet reached maximum medical improvement due to the condition of her left hip.

Appellees denied the MRI. The ALJ found that the MRI was reasonable and necessary medical treatment, but the Commission reversed that determination. Robinson now appeals to this court, arguing that the Commission erred in determining that Dr. Rizk's testimony was not credible and that the MRI was not reasonable and necessary medical treatment. Given our standard of review, we are constrained to affirm the Commission's decision.

In *Nabholz Construction Corp. v. Gates*, 2010 Ark. App. 182, at 1, this court set forth our standard of review in workers' compensation cases:

In reviewing decisions from the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings, and we affirm if the decision is supported by substantial evidence. *Whitlach v. Southland Land & Dev.*, 84 Ark. App. 399, 141 S.W.3d 916 (2004). Substantial evidence is that relevant evidence which reasonable minds might accept as adequate to support a conclusion. *K II Constr. Co. v. Crabtree*, 78 Ark. App. 222, 79 S.W.3d 414 (2004). The issue is not whether we might have reached a different result or whether the evidence would have supported a contrary finding; if reasonable minds could reach the Commission's conclusion, we must affirm its decision. *Geo. Specialty Chem., Inc. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000).

Arkansas Code Annotated section 11-9-508(a) (Supp. 2009) requires an employer to provide an injured employee such medical services "as may be reasonably necessary in connection with the injury received by the employee." The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Stone v. Dollar Gen. Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005). What constitutes reasonable and necessary medical

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treatment is a question of fact to be determined by the Commission. *Bohannon v. Wal-Mart Stores, Inc.*, 102 Ark. App. 37, 279 S.W.3d 502 (2008).

“[When] the Commission denies a claim because of the claimant’s failure to meet his burden of proof, the substantial-evidence standard of review requires that we affirm the Commission’s decision if its opinion displays a substantial basis for the denial of relief.”

Martin Charcoal, Inc. v. Britt, 102 Ark. App. 252, 255, 284 S.W.3d 91, 93 (2008).

Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. *Cedar Chemical Co. v. Knight*, 372 Ark. 233, 273 S.W.3d 473 (2008). When the evidence is contradictory, it is within the Commission’s province to reconcile conflicting evidence and to determine the true facts. *Id.* 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 that it deems worthy of belief; this court is foreclosed from determining the credibility and weight to be accorded to each witness’s testimony. *Id.* The Commission has the authority to accept or reject a medical opinion and the authority to determine its probative value. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002).

When the primary injury is shown to have arisen out of and in the course of employment, the employer is responsible for every natural consequence that flows from that injury. *McDonald Equip. Co. v. Turner*, 26 Ark. App. 264, 766 S.W.2d 936 (1989). The basic test is whether there is a causal connection between the two episodes. *Jeter v.*

B.R. McGinty Mech., 62 Ark. App. 53, 968 S.W.2d 645 (1998). The determination of whether the causal connection exists is a question of fact for the Commission to determine. *Carter v. Flintrol, Inc.*, 19 Ark. App. 317, 720 S.W.2d 337 (1986).

In reversing the ALJ's award of benefits, the Commission found that Robinson did not prove that any medical treatment for her left hip was reasonably necessary in connection with her compensable right-foot injury. The Commission found that Robinson had failed to prove that there was a causal connection between her compensable 2005 right-foot injury and Dr. Rizk's 2009 diagnosis of avascular necrosis in her left hip. The Commission specifically found that Dr. Rizk's opinion that Robinson's left hip problem was due to indirect trauma she suffered at the time of her 2005 compensable injury was entitled to no weight. The Commission found that there was no evidence that there was direct or indirect trauma to Robinson's left hip at the time of her right-foot injury, and it notes that no other doctor who treated Robinson had expressed an opinion that Robinson had sustained direct or indirect trauma to her left hip at the time of her compensable right-foot injury. The Commission found that there is "no evidence in the present matter demonstrating that the claimant's left-hip condition was related to her right-foot injury."

Robinson argues that she presented undisputed evidence of indirect trauma to her left hip at the time she sustained her right-foot injury through her testimony that when the forklift ran over her right foot, she attempted to pull her foot out from under the tire

and lost her balance, falling to the floor on her left side. While she testified that when she “slid down” she landed on her left side, there was no testimony that she struck her hip or landed on her hip. Furthermore, Dr. Rizk’s opinion that Robinson suffered from avascular necrosis was based on what she told him, but a review of his notes does not indicate that Robinson ever told him that she had fallen on her left hip or suffered trauma to her left hip at the time of her compensable right-foot injury.

Robinson also argues that the Commission erred in disregarding Dr. Rizk’s medical testimony. However, the Commission can accept or reject medical opinions, and it specifically found that Dr. Rizk’s opinion was entitled to no weight. While we might have found differently sitting as the finder of fact, it is the Commission’s province to accept or reject medical evidence, and it rejected Dr. Rizk’s opinion in this case. No other doctor other than Dr. Rizk ever correlated Robinson’s hip ailment with her compensable right-foot injury. Based upon our standard of review, we cannot say that, after rejecting Dr. Rizk’s opinion, the Commission’s finding that there was no causal connection between Robinson’s left-hip problems and her compensable injury was not supported by substantial evidence.

Affirmed.

ABRAMSON and HOOFFMAN, JJ., agree.