

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA09-482

BILLY DOTSON

APPELLANT

V.

LITTLE ROCK NATIONAL AIRPORT,
INC.

APPELLEE

Opinion Delivered December 9, 2009

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [NO. F511909]

AFFIRMED IN PART; REVERSED IN
PART; AND REMANDED

JOHN MAUZY PITTMAN, Judge

This is an appeal arguing that the Arkansas Workers' Compensation Commission erred in finding that appellant failed to show that an MRI requested by his treating physician was reasonable and necessary for treatment of his compensable back injury, and that the Commission also erred in failing to hold appellee employer in contempt for failure to abide by a change-of-physician order. We reverse the Commission's finding regarding the reasonable necessity of the requested MRI, and affirm the Commission's refusal to hold the appellee in contempt.

In determining the sufficiency of the evidence to support decisions of the Commission, 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. *Carman v. Haworth, Inc.*, 74 Ark. App. 55, 45 S.W.3d 408 (2001). 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 arrived at by the Commission. *Wal-Mart Stores, Inc. v. Sands*, 80 Ark. App. 51, 91 S.W.3d 93 (2002). Where, as here, the Commission has denied a claim because of the claimant's failure to meet his 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. *Williams v. Arkansas Oak Flooring Co.*, 267 Ark. 810, 590 S.W.2d 328 (Ark. App. 1979).

Viewed in light of this standard, the record shows that appellant Billy Dotson sustained a serious compensable crushing injury to his chest and back while employed by appellee in 2005. It is undisputed that this injury rendered appellant permanently and totally disabled. Dissatisfied with the care provided by the physician provided by appellee, appellant in 2007 sought and obtained an order designating Dr. Chakales as his treating physician. Dr. Chakales sought to obtain authorization for an MRI scan, but authorization was denied and the scan was not performed. Appellant filed this claim with the Commission to obtain the requested MRI scan, which was denied based on the Commission's finding that appellant failed to show reasonable necessity for the scan. We reverse this finding because the Commission's opinion fails to display a reasonable basis for denial of the requested relief.

The Commission's determination that appellant failed to show that an MRI was reasonably necessary was based on the report of a peer review company stating that the scan

had not been shown to be warranted because Dr. Chakales failed to include physical exam findings in his request. The report expressly stated that “additional information is needed” and that “[t]he lumbar MRI may be warranted in the future.” This report is not a reasonable basis for finding that appellant failed to prove entitlement to the requested MRI in this case because the report did not say that a lumbar MRI was unwarranted, but instead expressly stated that additional information is required—*yet the Commission acknowledged that appellee refused appellant’s request to return to Dr. Chakales, his authorized treating physician, to obtain the requested additional information.* Under these circumstances, the peer review report provides no reasonable basis for denial of the requested relief. We reverse and remand for the Commission to permit appellant to see Dr. Chakales in an attempt to satisfy the peer review company’s need for additional information.

We do not, however, agree that the Commission erred in refusing to find appellee in contempt for refusing to permit appellant to return to Dr. Chakales. Although Ark. Code Ann. § 11-9-706(b) (Repl. 2002) gives the Commission discretion to find a party in contempt for willful misconduct in connection with its orders and proceedings, here there was substantial evidence to support the Commission’s finding that the violation of the change-of-physician order was the result of a genuine mistake on the part of appellee’s adjuster rather than willful disobedience.

Affirmed in part; reversed in part; and remanded.

HART and GLOVER, JJ., agree.