

ARKANSAS COURT OF APPEALS

DIVISION I

No. CA10-517

WESTWOOD HEALTH &
REHABILITATION, INC., and CCMSI,
CARRIER

APPELLANTS

V.

STEVEN DIDDLE

APPELLEE

Opinion Delivered November 17, 2010

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F700988]

AFFIRMED

JOSEPHINE LINKER HART, Judge

As noted in a previous decision of this court,¹ the Arkansas Workers' Compensation Commission found that Steven Diddle's requested temporary total disability benefits and additional medical benefits were not necessitated by or connected with his admittedly compensable injury. The court reversed and remanded the Commission's decision after concluding that the Commission's opinion contained an erroneous finding of fact in that it misstated the contents of a medical record.²

In our previous opinion, this court noted that Diddle, who is a licensed practical nurse, suffered an admittedly compensable injury to his back on July 19, 2006, when he lifted a patient. The court noted, however, that the Commission's decision to deny benefits was based

¹*Diddle v. Westwood Health & Rehab., Inc.*, 2010 Ark. App. 57.

²The Commission had adopted the opinion of the administrative law judge.

on erroneous fact-finding, as the Commission found that medical records indicated that Diddle was returned to work by his treating physician on July 28, 2006, with no work restrictions. The court concluded that this factual finding was incorrect, as the medical record dated July 28, 2006, indicated that Diddle was still under the “same” restriction that he was under on July 20, 2006, the date he was first seen by his treating physician, that is, no lifting more than ten pounds. The court observed that the Commission, in denying benefits, proceeded under the false conclusion that Diddle continued to work for Westwood Health & Rehabilitation, Inc., and others while free of lifting restrictions. The court further observed that this erroneous fact-finding, on which the Commission expressly relied, led the Commission to its conclusion that Diddle’s back pain after the July 28, 2006, physician appointment could have resulted from some subsequent event.

In that opinion, this court held that the Commission failed to make a proper *de novo* review of the record, which resulted in it making an erroneous factual finding upon which it expressly relied in reaching its decision, thus leaving the court to speculate about what evidence the Commission intended to rely on when it made its decision. The court concluded that the Commission’s erroneous fact-finding required reversal and remand of the Commission’s decision for it to fully examine the evidence presented.

Following remand, the Commission stated, in its new opinion, that it had conducted a *de novo* review of the entire record. It found that Diddle demonstrated by a preponderance of the evidence that he was entitled to additional medical treatment for the compensable

injury to his back sustained while working for Westwood on July 19, 2006, and to temporary total disability benefits from August 25, 2007, until a date to be determined.

Westwood and its insurance carrier now appeal from the Commission's decision to award benefits. Appellants argue that the Commission's decision to reverse all of its prior findings and award compensation to Diddle was not supported by substantial evidence, was arbitrary and capricious, and was founded on speculation and conjecture. Appellants contend that the evidence presented to the Commission indicated that Diddle's back pain was related to an event subsequent to his July 2006 compensable injury. Particularly, appellants note that Diddle failed to continue his treatment in August 2006; that there was a gap in time between his July 2006 visit to his physician and his first visit to an emergency room on December 27, 2006; that Diddle worked for other employers during this period; that the emergency-room report from December 27, 2006, indicated a complaint of back pain for two months and six weeks; and that an emergency-room record from February 13, 2007, indicated a back injury on January 3, 2007, and a recent injury on December 27, 2006.

In its opinion, however, the Commission considered these matters and addressed them all. It noted that Diddle consistently presented a history of an injury in July 2006 while lifting a patient at work, with subsequent complaints of low-back pain. It concluded that there was no credible evidence that Diddle suffered an intervening injury. It noted that Diddle had no history of back problems prior to his compensable injury and found that he credibly testified that he suffered no other injury after that date. The Commission also noted that while there

were some discrepancies in the medical records regarding the date Diddle's injury occurred, it concluded the records ultimately reflected that Diddle's injury was reported as July 2006. It further resolved Diddle's failure to obtain treatment for his back after the July 2006 physician visit until his December 2006 emergency-room visit in favor of Diddle's explanation that he was given the "run around." It noted that no physician had changed Diddle's ten-pound lifting restriction and that there was no evidence that Diddle was aware of an offer of physical therapy. Thus, the Commission awarded benefits. On review, we consider whether the Commission's decision is supported by substantial evidence, and we defer to the Commission's credibility findings and its reconciliation of conflicting evidence. *White v. Gregg Agric. Enter.*, 72 Ark. App. 309, 37 S.W.3d 649 (2001). We cannot say that the Commission's decision was not supported by substantial evidence.

Appellants note that the Commission found that Diddle was credible, but observe that the Commission, in the opinion this court reversed, found that Diddle was not credible. Our previous reversal and remand of the case to the Commission, however, was for it to conduct a proper de novo review of the record, particularly noting that it had previously made an erroneous factual finding upon which it expressly relied in reaching its decision that Diddle's back pain arose from an event subsequent to his July 2006 visit to his physician. On remand, the Commission determined that Diddle's back pain was the result of his compensable injury, crediting both Diddle's testimony and the corroborating medical records. Directions by an appellate court to the Commission, as expressed by the opinion and mandate, must be

Cite as 2010 Ark. App. 774

followed exactly and placed into execution. *Johnson v. Bonds Fertilizer, Inc.*, 375 Ark. 224, 289 S.W.3d 431 (2008). Here, the Commission, when it conducted a de novo review of the record in which it found Diddle credible, merely executed this court's mandate. *See White v. Gregg Agric. Enter., supra* (holding that this court was not bound by the Commission's findings in the first appeal to this court because the court instructed the Commission to take into account more testimony).

Affirmed.

BAKER and BROWN, JJ., agree.