

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA 10-915

VIRGIL C. FURR

APPELLANT

V.

BECHTEL POWER CORPORATION,
AIG CLAIMS SERVICES, AND DEATH
& PERMANENT TOTAL DISABILITY
TRUST FUND

APPELLEES

Opinion Delivered May 4, 2011

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. E405-149]

AFFIRMED

DOUG MARTIN, Judge

Appellant Virgil Furr sustained an admittedly compensable injury to his back in September 1993. In 1996, an administrative law judge (ALJ) found that Furr had proven by a preponderance of the evidence that there was a causal connection between his 1993 compensable injury and a subsequent back surgery that was performed in 1995; the ALJ also awarded attorney's fees. The full Workers' Compensation Commission affirmed the ALJ's decision, and this court affirmed the Commission. *Bechtel Power Corp. v. Furr*, CA 97-1419 (Ark. App. May 20, 1998) (unpublished).

Numerous subsequent hearings were held over the next several years, many of which involved the question of Bechtel's alleged failure to pay Furr's attorney's fees. In 2008, Furr and Bechtel agreed to a set of stipulations, and another ALJ entered an order finding that,

while Furr's counsel was entitled to attorney's fees, Bechtel would not be liable for any penalty payments on those fees. The ALJ also found that Furr had not proven his entitlement to any additional medical expenses. In addition, the ALJ found that he was unable to determine whether Bechtel owed Furr any additional indemnity benefits because Furr had failed to meet his burden of proof on that issue.

On June 18, 2010, the Commission issued a lengthy and detailed opinion that largely affirmed the ALJ's order, although the Commission disagreed with the ALJ's finding that Furr had not proven by a preponderance of the evidence that liability remained for any outstanding medical expenses. The Commission agreed with the ALJ that Furr had failed to prove that any additional indemnity benefits should be awarded. Regarding the issue of attorney's fees, the Commission noted that Bechtel had indicated that it had complied with the ALJ's findings and had paid attorney's fees totaling \$10,139.90. The Commission further pointed out that "[t]he claimant on appeal does not dispute the respondents' calculations and payments." The Commission concluded that, because Furr did not prove that he was entitled to any additional indemnity benefits, and because Bechtel had complied with the ALJ's order regarding attorney's fees, no penalty would attach for the late payment of the attorney's fees. The Commission also awarded Furr's attorney \$250 for prevailing on appeal to the Commission. Both Furr and Bechtel filed notices of appeal from the Commission's decision.

We affirm the decision of the Commission by memorandum opinion. According to Rule 5-2(e) of the Rules of the Arkansas Supreme Court, opinions of the court of appeals

“may be in conventional form or memorandum form.” Memorandum opinions may be issued in any or all of the following cases:

- (a) Where the only substantial question involved is the sufficiency of the evidence;
- (b) Where the opinion, or findings of fact and conclusions of law, of the trial court or agency adequately explain the decision and we affirm;
- (c) Where the trial court or agency does not abuse its discretion and that is the only substantial issue involved; and
- (d) Where the disposition of the appeal is clearly controlled by a prior holding of this court or the Arkansas Supreme Court and we do not find that our holding should be changed or that the case should be certified to the supreme court.

See Lowe’s Home Centers, Inc. v. Stengel, 2011 Ark. App. 127; *Morgan v. Methodist Family Health*, 2011 Ark. App. 97; *In re Memorandum Opinions*, 16 Ark. App. 301, 700 S.W.2d 63 (1985). We conclude that this case falls within categories (a) and (b).

Where 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 this court to affirm if the Commission’s opinion displays a substantial basis for the denial of relief. *Campbell v. Dep’t of Workforce Educ.*, 2009 Ark. App. 742; *Parson v. Ark. Methodist Hosp.*, 103 Ark. App. 178, 287 S.W.3d 645 (2008). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Williams v. Prostaff Temps.*, 336 Ark. 510, 988 S.W.2d 1 (1999). When, from this court’s review, we conclude that the Commission’s decision more than adequately explains its decision and displays a substantial basis for the

denial of relief, we may affirm the Commission's decision by memorandum opinion. *Campbell, supra*.

In this case, the Commission's 2010 opinion was an exhaustively detailed account of the factual and procedural history of this case and the culmination of nearly seventeen years of claims and litigation. The basis of its decision was, in essence, that while Furr had demonstrated that his additional medical treatment in 2005 was reasonably necessary, he failed to prove his entitlement to either additional indemnity benefits or additional attorney's fees. Furr's arguments on appeal center primarily on his claims that the Commission erred in failing to award attorney's fees and penalties. In essence, he challenges the sufficiency of the evidence supporting the Commission's factual determination that he failed to meet his burden of proving that he was entitled to additional benefits and attorney's fees. Similarly, Bechtel's argument on appeal centers on its contention that the Commission erred in finding sufficient evidence on which to award Furr additional medical expenses. From our review, we conclude that the Commission's decision more than adequately explains its decision and displays a substantial basis for the denial of relief. Therefore, we affirm the Commission's decision by this memorandum opinion.

Affirmed.

GRUBER, J., agrees.

HART, J., concurs.