

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA 10-1239

MICHAEL WHITSON

APPELLANT

V.

J.B. HUNT TRANSPORT, INC., and
INSURANCE COMPANY OF
PENNSYLVANIA

APPELLEES

Opinion Delivered May 4, 2011

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F609417]

AFFIRMED

WAYMOND M. BROWN, Judge

This is an appeal from the denial of additional workers' compensation benefits. The Workers' Compensation Commission found that an injury to Michael Whitson's pancreas was unrelated to his compensable spleen injury. Whitson challenges this finding, arguing that the Commission had no substantial basis for rejecting the opinion of three treating physicians. Though the Commission preferred the opinion of another physician, who merely reviewed the medical records and came to the conclusion that Whitson's pancreatic condition was unrelated to his compensable injury, the Commission's opinion displays a substantial basis for the denial of relief. Therefore, we affirm.

Whitson was an over-the-road truck driver for J.B. Hunt. He suffered a compensable injury to his spleen in July 2006. According to testimony, Whitson was in the process of

pulling out a pin on his trailer when he struck himself in the abdomen with the tool he was using and his fist. When he arrived at his destination, others at the location told him that he looked bad enough that they were not allowing him to get back in his truck. He was taken to a hospital, where he was diagnosed with a ruptured spleen. He was rushed to emergency surgery, where doctors removed his spleen.

Over the following two years, Whitson lacked stamina and became more susceptible to infections. (The doctors involved in this case stated that those who have undergone splenectomies have increased susceptibility to infections for about two years after the spleen has been removed.) In September 2008, Whitson presented to a hospital with complaints of fevers, chills, and diarrhea. Medical records showed a pleural effusion in the area of the left lower lung and a collection of fluid in the left upper quadrant of the abdomen. Doctors investigated the build up of fluid. Whitson was referred to Dr. Jeffrey Maire to get an opinion as to how to approach the problem. In a letter dated October 31, 2008, Dr. Maire gave his opinion as to the source of the fluid:

I did review his CT scans. The first was performed on September 18, 2008. This showed a 6 cm left upper quadrant fluid collection. I do believe it is related to splenectomy. I do not believe it is pancreatic pseudocyst or a connection to other areas in a clinical setting. There is no evidence of obvious infection of this area. This could be as simple as a seroma.

In April 2009, Dr. Maire conducted surgery to drain the fluid. He later opined that the fluid was the result of a leak in Whitson's pancreas.

In October 2009, Whitson presented to Dr. William Silverman for a consultation

regarding his pancreatitis. Dr. Silverman had the following impression:

Very low grade persistent pancreas duct fistula in the presence of an emergency splenectomy done for splenic rupture resulting from a motor vehicle accident driving a truck. The presence of the fistula appearing several years later is likely the result of a persistent subclinical fluid collection resulting from the pancreas leak, which secondarily became infected due to translocation of bacteria from the gut. This was treated with percutaneous drainage as noted above. I do not find evidence to suggest that the above problem is the sequela of any prior alcohol discretion.

In her medical records and in a deposition, Dr. Overton-Keary related Whitson's pancreatitis to his splenectomy. She was unaware of any medical note stating that the damage to Whitson's pancreas happened at the time his spleen was removed, but she could not relate Whitson's condition to anything other than the surgery. On cross-examination, she stated, "[I]t is my best guess based on my medical experience that the surgery on the spleen caused the problem with the pancreas. I have never seen it before. With talking to all the other doctors . . . , the only way that they felt that this has occurred was from that."

Dr. Emilio Tirado testified at the hearing. He reviewed the medical records, depositions from Dr. Overton-Keary and Whitson, and the interrogatories, but he did not examine Whitson personally. He also studied research on pancreatitis and splenectomies. He did not see a connection between the two in this case. Dr. Tirado stated that he would have counseled against accepting initial liability, as he thought that the ruptured spleen was caused by Whitson's use of the drug Plavix. He did not believe that a person could rupture his spleen simply by hitting himself in the stomach, though he did state that a person taking Plavix could rupture his spleen with an insignificant amount of trauma.

As for the pancreatitis, Dr. Tirado related it to Whitson's alcohol use (though Whitson had quit drinking in 1989). Dr. Tirado opined that alcohol could cause pancreatitis long after someone stops drinking. He also stated that Whitson's smoking habits and his use of Plavix and Lotrel could also have contributed to his condition. Dr. Tirado opined that, had the pancreatitis been related to the surgery, Whitson would have known within a few weeks after the surgery, due to the amount of damage the condition would cause. While Dr. Tirado noted that doctors started finding fluid in Whitson's body in October 2008, there was no diagnosis of pancreatitis until September 2009; therefore, he thought that the medical records could have been referring to two different fluids.

Before an administrative law judge (ALJ), Whitson argued that the pancreatic leak was causally related to the removal of his spleen in August 2006. The ALJ disagreed. He rejected Dr. Overton-Keary's opinion, stating that it was based upon speculation and conjecture. He rejected the opinions of Drs. Maire and Silverman, stating that they did not provide an explanation or basis for their opinion. Instead, the ALJ credited Dr. Tirado's opinion. Though the ALJ acknowledged that Dr. Tirado did not physically examine Whitson, he believed that to be of little consequence, as the matter involved was primarily a medical question. He found Dr. Tirado's opinion to be entitled to greater weight given his experience and given the lack of explanation by the other doctors. The Commission affirmed and adopted the opinion of the ALJ.

Whitson argues that substantial evidence does not support the Commission's decision

to deny him additional medical treatment and temporary-total disability. Relying on the opinions of Drs. Overton-Keary, Silverman, and Maire, he contends that he established a causal connection to his splenectomy and his pancreatic problems. He discounts the opinion of Dr. Tirado, noting that Dr. Tirado never examined him and asserting that Dr. Tirado's opinion was merely based on speculation.

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 decision and affirm if that decision is supported by substantial evidence.¹ Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion.² The issue is not whether the reviewing court might have reached a different result from the Commission; if reasonable minds could reach the result found by the Commission, we must affirm the decision.³ When the Commission affirms and adopts the opinion of the ALJ, the Commission makes the ALJ's findings and conclusions its own; in such cases, we consider both the ALJ's opinion and the Commission's.⁴

The Commission has the duty of weighing medical evidence, and the resolution of

¹ *Smith v. City of Ft. Smith*, 84 Ark. App. 430, 143 S.W.3d 593 (2004).

² *Williams v. Prostaff Temps.*, 336 Ark. 510, 988 S.W.2d 1 (1999).

³ *Minnesota Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999).

⁴ *Death & Permanent Total Disability Trust Fund v. Branum*, 82 Ark. App. 338, 107 S.W.3d 876 (2003).

conflicting evidence is a question of fact for the Commission.⁵ The interpretation of medical opinion is also for the Commission, and its interpretation has the weight and force of a jury verdict.⁶ But the Commission may not arbitrarily disregard medical evidence or the testimony of any witness.⁷

The sole question before us is whether Whitson's pancreatic injury was related to his surgery. While an employer is responsible for any natural consequence that flows from a compensable injury,⁸ the Commission had before it competing opinions about whether Whitson's pancreatic leak was causally related to his surgery. It is the Commission's duty to resolve conflicts in the medical evidence.⁹ The Commission may give greater weight to a treating physician rather than a doctor who sees a patient for an independent evaluation, but it is not required to do so.¹⁰ The Commission may even accept the opinion of a doctor who merely reviews the medical records as long as the doctor has a substantial basis for his opinion.

⁵ *Stone v. Dollar Gen. Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005).

⁶ *Oak Grove Lumber Co. v. Highfill*, 62 Ark. App. 42, 968 S.W.2d 637 (1998).

⁷ *Hill v. Baptist Med. Ctr.*, 74 Ark. App. 250, 48 S.W.3d 544 (2001).

⁸ *See Homes v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (2003); *Tuberville v. Int'l Paper Co.*, 28 Ark. App. 196, 771 S.W.2d 805 (1989).

⁹ *Polk County v. Jones*, 74 Ark. App. 159, 47 S.W.3d 904 (2001).

¹⁰ *Averitt Express, Inc. v. Gilley*, 104 Ark. App. 16, 289 S.W.3d 118 (2008); *see also Roberson v. Waste Mgmt.*, 58 Ark. App. 11, 944 S.W.2d 858 (1997) (holding that a doctor's medical records supported the Commission's findings despite the fact that the doctor examined the claimant for only ten minutes).

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While Drs. Overton-Keary, Silverman, and Maire all opined that Whitson's condition was causally related to his surgery, Dr. Tirado believed that the two were unrelated. The Commission found that Dr. Tirado's opinion was entitled to greater weight. Nothing in the record required the Commission to reject Dr. Tirado's opinion as a matter of law. Rarely do we reverse the Commission when the decision comes to which doctor(s) the Commission chose to credit. Substantial evidence supports the Commission's decision here. Therefore, we affirm.

Affirmed.

WYNNE and ABRAMSON, JJ., agree.