

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA10-1279

SEYOUM CLARK

APPELLANT

V.

EL NOPAL, INC.

TRUCK EXCHANGE INSURANCE

APPELLEES

Opinion Delivered September 7, 2011

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F811507]

AFFIRMED

WAYMOND M. BROWN, Judge

Seyoum Clark appeals the denial of workers' compensation benefits. His claim was first heard by an administrative law judge, who denied the claim upon finding that Clark failed to show a causal connection between his current back problems and the work-related accident at issue. The Workers' Compensation Commission ("Commission") affirmed and adopted the ALJ's fact findings and decision on August 19, 2010. Because we find that substantial evidence supports the Commission's decision, we affirm.

On November 13, 2008, the appellant was injured in the course of his job as a dishwasher when a heavy pot fell off a counter, brushed his thigh, and dropped onto his left foot. In January of 2009 Dr. Michael Weber, an orthopedic surgeon, diagnosed Clark with spondylolisthesis at L5-S1, with a bulging disc and foraminal narrowing on both sides. Clark argues on appeal that the Commission did not give proper weight to his testimony or Dr. Weber's opinions and that a preponderance of the evidence established a causal connection

between the accident and his lower back problems. However, the standard of review does not permit this court to conduct a *de novo* review and judge where the preponderance of the evidence lies. On the contrary, this court will not reverse the Commission's decision unless it is convinced that no fair-minded person with the same facts could have reached the conclusions arrived at by the Commission.¹ The court views the evidence and reasonable inferences deducible therefrom in a light most favorable to the Commission's decision.²

The question presented to this court is not whether the evidence would support findings contrary to those made by the Commission, but whether evidence supports the findings made by the Commission.³ Even if the decision of the Commission is *against* the preponderance of the evidence, this court will not reverse where the Commission's decision is supported by substantial evidence.⁴ Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion.⁵

In this case, there is substantial evidence to support the findings and decision of the Commission. Clark testified that the pot fell directly onto his left foot and brushed his leg, but never came close to his back. At the time of the accident, he told co-workers that his foot was injured, and he specifically denied having any other injury or pain. In a recorded statement to his employer's insurer the day following the accident, Clark said the injury was in his foot and mentioned no other area of injury or pain. In addition, medical records from multiple doctor and emergency room visits in November and December of 2008 contain no mention

¹ *Dorris v. Townsends of Ark.*, 93 Ark. App. 208, 218 S.W.3d 351 (2005).

² *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 21 (2000).

³ *Snow v. ALCOA*, 15 Ark. App. 205, 691 S.W.2d 194 (1985).

⁴ *Id.*

⁵ *Wheeler Construction Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001).

of back pain or back-related symptoms of any kind. Those symptoms did not appear in the medical records until a lumbar spine MRI was performed in January of 2009, two months after the accident and after Dr. Weber suggested a back problem was causing Clark's foot pain to persist. Clark testified to the ALJ that he told his doctors and ER healthcare providers that the pot knocked him down and he experienced back pain within days of the accident. That assertion, however, is unsupported by any other evidence and is in fact contradicted by the medical records and the transcript of the recorded statement Clark made the day after the accident.

Moreover, an independent medical evaluation was performed on April 2, 2009, by Dr. Barry Baskin, a physical medicine and rehabilitation physician, who concluded that the November 13, 2008 accident did not cause Clark's back problem. Dr. Baskin stated that while it was "possible" the accident could have exacerbated an existing back condition, he could not say with reasonable medical certainty whether it did or not because there were no pre-accident imaging studies to use for comparison. Finally, medical records were introduced into evidence showing that Clark was seen in the ER in 2005 complaining of lower back pain or injury, after he testified that he had never experienced back pain before. Altogether, there was substantial evidence to support the finding of the Commission that a causal link had not been adequately established.

Clark further argues that the Commission erred in concluding "that the opinion of Dr. Weber is based solely on subjective complaints of appellant and is speculative." First, this does not accurately describe the Commission's findings. The Commission did not find Dr. Weber's clinical diagnosis of the appellant's back condition to be speculative. What the Commission

deemed speculative was the causal connection, implied rather than directly stated by Dr. Weber, between the pot accident and Clark's back problems. Because Dr. Weber's understanding of Clark's symptoms and when they started would be wholly dependent on what Clark himself reported (whether to Dr. Weber directly or to other healthcare providers), it was not unreasonable for the Commission to find that Dr. Weber's statement suggesting a causal link was speculative at its foundation. In any event, it is the exclusive province of the Commission to determine the credibility of witnesses and the weight to be given their testimony.⁶ The Commission is not required to believe any witness, and it may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief.⁷ The Commission did not err in choosing to place greater weight on the opinions of one physician over another.

Likewise, the determination of whether a causal connection exists is a question of fact for the Commission to determine.⁸ The burden was on the appellant to prove a causal connection between the work-related accident and the disabling injury.⁹ The record substantially supports the Commission's finding that the appellant failed to meet this burden of proof. Accordingly, we affirm.

PITTMAN and GLADWIN, JJ., agree.

⁶ *Honeysuckle v. Curtis H. Stout, Inc.*, 2010 Ark. App. 328.

⁷ *Ward, supra*.

⁸ *Jeter v. B.R. McGinty Mech.*, 62 Ark. App. 53, 968 S.W.2d 645 (1998).

⁹ *Stephenson v. Tyson Foods, Inc.*, 70 Ark. App. 265, 19 S.W.3d 36 (2000).