

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA11-57

STEVE CRAWFORD

APPELLANT

V.

SUPERIOR INDUSTRIES, Employer;
REGIONS CLAIMS MANAGEMENT;
AND DEATH and PERMANENT
DISABILITY FUND

APPELLEES

OPINION DELIVERED SEPTEMBER 7, 2011

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F500021]

AFFIRMED

ROBERT J. GLADWIN, Judge

By opinion filed October 21, 2010, the Arkansas Workers' Compensation Commission found that appellant Steve Crawford suffered a loss in wage-earning capacity in an amount equal to an eighteen-percent impairment to the body as a whole, but was not rendered permanently and totally disabled from the compensable injury he sustained during the course and scope of his employment with appellee Superior Industries on October 28, 2004. Appellant argues that the Commission's opinion is not supported by substantial evidence. Additionally, appellees filed a cross-appeal, arguing that substantial evidence does not support the Commission's finding that appellant proved entitlement to a loss in wage-earning capacity in an amount equal to an eighteen-percent impairment to the body as a whole. The only issue is the sufficiency of the evidence, and the Commission's decision adequately displays a substantial basis for the denial of relief. Accordingly, we affirm.

Appellant, a forty-five-year-old man, has a high school diploma and two years of post-high school education. At the time of his injury, he worked for appellee Superior Industries rebuilding molds, which required bending, stooping, lifting, and carrying on a daily basis. Appellant has held other positions with Superior during the fifteen years that he worked there, all of which were physical jobs requiring similar activity. It is undisputed that appellant has been unemployed since December 20, 2004, following his compensable injuries.

Appellant was seen by Dr. Raye Mitchell on November 22, 2004, regarding the compensable injury to his left shoulder, and had nerve-conduction studies performed on December 14, 2004, by Dr. Miles M. Johnson, related to complaints of left arm and hand numbness. At that time, he was diagnosed with left-carpal-tunnel syndrome that was later found to be compensable. On January 23, 2006, appellant underwent shoulder surgery performed by Dr. Mitchell, but he still has trouble with his left shoulder throbbing and aching, and symptoms of the onset of arthritis. At that time, appellant also had a carpal-tunnel release on his left wrist. Appellant continues to have problems with his hands, including loss of strength, loss of grip, dropping things, and staying cold. Finally, appellant suffered a neck injury while working for Superior and was seen by Dr. Mitchell on May 15, 2006. An MRI was performed on his cervical spine on September 22, 2006. On November 27, 2006, Dr. Larry G. Armstrong diagnosed cervical strain, cervical myofascial neuralgia, cervical-disc degeneration, and significant cervical-bone degeneration at C4, C5, and C6, and recommended physical therapy and reevaluation in two months. On January 29, 2007, Dr. Armstrong opined that appellant had not improved despite two months of physical therapy and did not think his condition would improve. Appellant then saw Dr. Luke Knox on July

9, 2007, who diagnosed appellant with a herniated disc at C3-4, with significant disc space changes at C4-5, and mild herniation at C5-6. The last treatment that appellant received for his neck was from Dr. Knox, who suggested either physical therapy or epidural-steroid injections. Nothing further has been done to attempt to fix appellant's herniated discs, as a previous ruling found that additional medical treatment was not reasonable and necessary.

Appellant notes that he applied for and was approved to receive social-security disability benefits. At the social-security disability hearing, the vocational expert testified that appellant could not perform any past relevant work. Further, the vocational expert concluded that considering appellant's age, education, work experience, and residual functional capacity, there are no jobs that exist in the national economy that appellant can perform. This is not controlling, however, and we note that permanent and total disability for the purposes of social security is different from permanent and total disability under our workers' compensation law. See *Martin v. Jensen Constr. Co.*, 2010 Ark. App. 294, 374 S.W.3d 774.

Appellant argues that the Commission erroneously found that he failed to prove that he was permanently and totally disabled. Appellant submits that he remains unable to work because of his multiple impairments and that there are no jobs available to him within the restrictions of no lifting over ten pounds, his functional restrictions, and not being released to return to work due to his compensable injuries. Appellant claims that with his current problems and limitations, he cannot compete in the current job market with other able-bodied individuals.

The ALJ, and subsequently the Commission, found that appellant was evasive in answering questions and was not a credible witness regarding the extent of his problems and

limitations. The ALJ, later affirmed by the Commission, acknowledged that appellant could no longer perform the same types of tasks required in his previous manual-labor positions, and that his employment opportunities had been substantially reduced by the physical limitations caused by his various compensable injuries. But the ALJ went on to determine that he had the ability to work as a convenience-store clerk, in an automobile detail shop, or as a greeter at a shopping center. The ALJ also found that appellant could participate in lighter forms of manual labor, especially utilizing his right arm.

A specific finding was made that appellant's willingness to work was somewhat lacking in that he had not appeared to have fully engaged himself in the process of finding new employment. Since the time he ceased working in 2004, appellant has applied for only two jobs—one of which was with Wal-Mart, where he did not even know if there was an opening, and the other was for a lawn-mowing job that he acknowledged he probably could not have performed had it been offered to him. When asked why he did not obtain employment with Wal-Mart, appellant testified that he never got a response from them, suggesting that he never followed up or took an active interest in being hired.

The record also indicates that appellant provided contradictory statements regarding his injuries and limitations related to other activities such as hunting, fishing, and driving. Appellant acknowledged that since his injury, he was charged with battery for punching someone with his right hand. Despite appellant's contention that he is unable to grip things and has trouble moving his left shoulder, video evidence was introduced that showed appellant gripping a towel for several minutes while bending over to wipe down the tires of

his wife's car. The ALJ even indicated in his July 7, 2010 opinion that appellant demonstrated "much more vigor" in the video than he did when moving about the hearing room.

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 us to affirm if the Commission's opinion displays a substantial basis for the denial of relief. *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 the Commission, as it did here, affirms and adopts the ALJ's opinion, we consider both the ALJ's decision and the Commission's majority opinion. *Fayetteville Sch. Dist. v. Kunzelman*, 93 Ark. App. 160, 217 S.W.3d 149 (2005). From our review, we conclude that the relevant decisions more than adequately explain the decision and display a substantial basis for the denial of relief. Therefore, we affirm the Commission's decision.

Affirmed.

PITTMAN and BROWN, JJ., agree.