OFFICIAL ARKANSAS
COURT OF APPEALS OPINION

Cite as 2011 Ark. App. 524

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA 11-168

	Opinion Delivered SEPTEMBER 14, 2011
JERRY BEAVER APPELLANT	APPEAL FROM THE ARKANSAS WORKERS' COMPENSATION COMMISSION, [NO. F907171]
V.	
GRAPHIC PACKAGING and LIBERTY MUTUAL GROUP APPELLEES	REVERSED AND REMANDED

JOHN B. ROBBINS, Judge

Appellant Jerry Beaver appeals the denial of his claim for benefits he sought before the Workers' Compensation Commission regarding a shoulder injury he said he sustained on July 22, 2008, while at work for his employer, appellee Graphic Packaging. The administrative law judge (ALJ) found that Beaver failed to prove by a preponderance of the evidence that his shoulder injury was sustained at work. Beaver appealed to the Commission, which affirmed and adopted the ALJ's decision in a two-to-one Commissioner vote. Beaver appeals to our court, contending that the denial of his claim is not supported by substantial evidence. We have reviewed this case under the proper standards and reverse because the Commission's decision does not display a substantial basis for denial of benefits.

In reviewing a decision from the Workers' Compensation Commission, we review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the

Official Arkansas Court of Appeals Opinion

Commission's findings and affirm if the decision is supported by substantial evidence. *White v. Frolic Footwear*, 59 Ark. App. 12, 952 S.W.2d 190 (1997). Substantial evidence exists only if reasonable minds could have reached the same conclusion without resort to speculation or conjecture. *White Consol. Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001). Where the denial of a claim is based upon the claimant's failure to meet his burden of proving entitlement to benefits, the substantial-evidence standard of review requires that we affirm if the Commission's decision displays a substantial basis for the denial of relief. *Frances v. Gaylord Container Corp.*, 341 Ark. 527, 20 S.W.3d 280 (2000). Although we give deference to the Commission on issues of weight of evidence and credibility of witnesses, the Commission may not arbitrarily disregard testimony and is not so insulated that it renders appellate review meaningless. *Freeman v. Con-Agra Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001). We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions of the Commission. *Cedar Chem. Co. v. Knight*, 99 Ark. App. 162, 258 S.W.3d 394 (2007).

The evidence presented to the Commission included physician and surgeon reports, handwritten notes of two Graphic Packaging managers, and a single witness (Beaver). Beaver began working for Graphic Packaging in 2005, when he was in his fifties. He had a history of rotator-cuff tears and surgical repairs in both shoulders. He had a seven-percent-whole-body impairment rating as a result of his prior right-shoulder surgery in 2003. Beaver worked at full duty for Graphic Packaging in the shipping department, which required that he primarily drive a fork lift to move finished goods and that he occasionally manually lift and re-stack goods.

Official Arkansas Court of Appeals Opinion

Beaver testified that on July 22, 2008, he was pulling heavy paperboards from under a machine when he heard a "pop" in his right shoulder and felt a burning sensation. He reported the incident to the supervisor present that day, Mark Rhinehart, whose handwritten and signed note was entered into evidence, stating:

> 7-22-08 about 12:30 p.m. Jerry reported to me that his shoulder was hurting. He explained to me that he was pulling sheets out from under the Astriade to clean out from under machine. As he was pulling on the dump tray his shoulder popped. He said it was hurting a little but was alright at the time.

Beaver said that Rhinehart offered to send him to the doctor, but he did not go because he thought the pain would go away. Beaver continued to work without complaint and testified that he just tolerated the pain. When the regular supervisor, Brian Christello, returned some days later, he offered to send Beaver to the doctor, but Beaver declined and continued to work.

On the morning of September 22, 2008, Beaver approached Christello about his painful shoulder. Christello's handwritten and signed note was entered into evidence:

> On 9-22-08 (7:15am) Jerry came to me to report that his shoulder was hurting so bad that he couldn't hold a phone up. I asked what happen. He stated that he was at Devil Den with grand kids and swat at a fly or bug and felt pain. He is saying it was caused by an incident report on 7-22-08 that was reported to Mark Rhinehart. I did ask afterwards how the rest of his weekend went. He stated he had a great time camping.

Beaver testified that the shoulder pain never stopped after the July 22 incident and that the fly-swatting was only an example he gave to Christello when he was asked what kind of activity irritated his shoulder.

Christello sent him immediately to the company's safety director, Larry Alexander, who sent him to the company physician, Dr. Clark. Beaver presented that morning at 8:45 to the Cooper Clinic to see Dr. Clark, who noted Beaver's history of the shoulder-popping

Official Arkansas Court of Appeals Opinion

event at work on July 22, noted this as a work-related injury, and ordered an MRI. Dr. Clark's impression was "right shoulder impingement, rule out torn rotator cuff." Dr. Clark indicated his plan for treatment:

> MRI of the right shoulder. In the meantime he may go ahead and work without restrictions with caution. Recheck in 4-5 days after the MRI.

Dr. Cain, the radiologist, interpreted the September 29, 2008 MRI as evidencing a "large rotator cuff tear which appears to involve virtually all of the supraspinatus, retracted up to 5 cm." Beaver continued to work at Graphic Packaging until he underwent arthroscopic surgery on December 10, 2008, to repair the damage.

The ALJ found that Beaver failed to meet his burden of proof on causation, finding in relevant part:

> His ability to continue working after July 22, 2008, and his lack of desire to see a doctor makes it unlikely that this tear in the claimant's right rotator cuff occurred on July 22, 2008.
>
> It seems much more likely that the claimant had some sort of incident while camping whether that be from swatting an insect or other activities that caused his current difficulties.

On appeal to the Commission, two of the three Commissioners voted to affirm and adopted the ALJ's decision. The appeal is now before us for review.

Beaver asserts that reasonable minds could not conclude that causation was lacking on this record. The claimant bears the burden to prove by a preponderance of the evidence that there exists a causal connection between the employment and the injury. *Long v. Wal-Mart Stores, Inc.*, 98 Ark. App. 70, 250 S.W.3d 263 (2007). He argues that all the evidence of record is consistent with his report of a work-related injury to his right shoulder on July 22, and all medical evidence is compatible with this history. Beaver adds that it is not logical to

Official Arkansas Court of Appeals Opinion

draw any contrary inference from his continued work between July 22 and September 22 because he worked all the way up to his surgery despite this injury. He contends that the ALJ substituted speculation and conjecture for evidence on causation. We agree.

Determination of a causal relationship is a factual question driven by the individual facts of each case. *Hernandez v. Wal-Mart, Inc.*, 2009 Ark. App. 531, 337 S.W.3d 531. Beaver undisputedly reported a specific incident at work, there were objective findings of injury to his shoulder, and all medical providers agreed on causation. Beaver's credibility was not found lacking. Beaver worked both before and after being seen by the company doctor who suspected a rotator-cuff tear. He worked until the time of surgical repair on December 10. Beaver's willingness to work with pain does not equate to a break in the causal link. The record wholly supports a finding of compensability, and reasonable minds could not conclude otherwise without resort to speculation and conjecture about what might have happened during a camping trip. *White Consol. Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001). In this instance, the ALJ's decision does not display a substantial basis for the denial of relief.

Reversed and remanded.

GRUBER and ABRAMSON, JJ., agree.

Walker, Shock & Harp, PLLC, by: *Eddie H. Walker, Jr.*, for appellant.

Ledbetter, Cogbill, Arnold & Harrison, LLP, by: *James A. Arnold II* and *Farrah L. Fielder*, for appellees.