

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA 11-906

OUACHITA COUNTY MEDICAL
CENTER and RISK MANAGEMENT
RESOURCES

APPELLANTS

V.

STACEY MURPHY

APPELLEE

Opinion Delivered February 8, 2012

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NOS. G005683, G005686]

AFFIRMED

WAYMOND M. BROWN, Judge

This appeal arises from a decision by the Workers' Compensation Commission awarding the appellee, Stacey Murphy, reasonable and necessary medical treatment and temporary-total-disability benefits related to carpal-tunnel injuries arising out of and in the course of her employment with Ouachita County Medical Center. Because the Commission's decision is supported by substantial evidence, we affirm.

Factual and Procedural Background

Appellee Stacey Murphy began working for Ouachita County Medical Center in November 1997. Her primary duties as a staff technologist were performing CT scans and ultrasounds. In 2004, appellee sought treatment for numbness and tingling in her right hand. Dr. David Silas performed a nerve-conduction study in February 2004 and wrote in his report



that the test showed abnormal nerve conduction velocity in both upper extremities, but ruled out carpal tunnel syndrome at that time. Appellee wore an arm splint and took nonsteroidal anti-inflammatory medication but continued to have numbness and tingling in her right hand. Medical records reflect that at some point in the next couple of years, she was diagnosed with carpal tunnel syndrome and was given injection treatments. In April 2008, a physical examination by Dr. Jay Lipke, an orthopedic surgeon, revealed a positive Phalen's test and a negative Tinel's sign. Dr. Lipke scheduled appellee for right-hand carpal-tunnel repair, which was performed by Dr. Charles Fohn on June 18, 2008. Appellee was released back to work on August 4, 2008, with no restrictions.

The medical records and appellee's testimony indicate that appellee complained to Dr. Dan Martin of numbness in both hands and tingling in her fingers in May 2009, neck pain and numbness in both hands in August 2009, and severe right-arm and right-hand pain and paresthesia in September 2009. An MRI revealed marked degenerative disc changes at C5-C6 and C6-C7 that were likely causing C7 nerve-root compression. Dr. Edward Saer performed cervical-fusion surgery on October 14, 2009.

When appellee's symptoms returned, Dr. Saer referred her to Dr. Jeanine Andersson, an orthopedic specialist who evaluated appellee on May 6, 2010. A nerve-conduction study performed at that time showed bilateral carpal tunnel syndrome, and on June 14, 2010, appellee filed notice of a work-related injury for the first time. Previously, she had sought treatment on her own and had her medical treatment filed under her own insurance. On September 24, 2010, Dr. Andersson wrote a letter stating that, to a reasonable degree of



medical certainty, appellee’s carpal tunnel syndrome “was directed to her job as an ultrasound technician, which requires sustained volar flexion through the wrist which is [a] known aggravating factor for carpal tunnel syndrome.” On November 19, 2010, and December 15, 2010, appellee underwent carpal-tunnel-release surgery on her left and right hands, respectively. Dr. Andersson provided a written release indicating that appellee could return to work on March 28, 2011.

A hearing was held before an administrative law judge on January 5, 2011. The ALJ found that appellee’s bilateral carpal tunnel syndrome was compensable and awarded all reasonable and necessary medical treatment related to that condition occurring after June 14, 2010. The ALJ further found that appellee had remained off work and in her healing period since November 19, 2010, and was therefore entitled to temporary-total-disability benefits from November 19, 2010, to a date yet to be determined. In an opinion dated July 11, 2011, the Commission affirmed and adopted the ALJ’s decision and findings.

Standard of Review

This court will not reverse a decision of the Workers’ Compensation Commission unless we are convinced that no fair-minded person with the same facts could have reached the conclusions arrived at by the Commission.¹ We view the evidence and reasonable inferences deducible therefrom in a light most favorable to the Commission’s decision,² and

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

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



we must affirm if the decision is supported by substantial evidence.³ Substantial evidence is that relevant evidence that a reasonable mind might accept as adequate to support a conclusion.⁴ 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.⁵

Typically, we review only the decision of the Commission, not that of the ALJ.⁶ However, in this case the Commission affirmed and adopted the ALJ's opinion as its own. In so doing, the Commission makes the ALJ's findings and conclusions the findings and conclusions of the Commission.⁷ Therefore, for purposes of our review, we consider both the ALJ's decision and the Commission's majority decision.

Discussion

The burden of proof rests on the claimant to prove the compensability of her injuries.⁸ A compensable injury must be established by medical evidence supported by objective findings,⁹ which are defined as findings that cannot come under the voluntary control of the

³*Ward v. Hickory Springs Mfg. Co.*, 97 Ark. App. 311, 248 S.W.3d 482 (2007).

⁴*Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001).

⁵*Snow v. Alcoa*, 15 Ark. App. 205, 691 S.W.2d 194 (1985).

⁶*Southeast Ark. Human Dev. Ctr. v. Courtney*, 99 Ark. App. 87, 257 S.W.3d 554 (2007).

⁷*Id.*

⁸Ark. Code Ann. § 11-9-102(4)(E) (Supp. 2011).

⁹Ark. Code Ann. § 11-9-102(4)(D).



patient.¹⁰ Objective medical evidence is necessary to establish the existence and the extent of an injury but is not essential to establish the causal relationship between the injury and a work-related accident.¹¹ The determination of whether a causal connection exists is a question of fact for the Commission to determine.¹²

Appellants do not dispute that appellee suffered from carpal tunnel syndrome during the course of her employment; rather, the issue is whether those injuries arose out of and in the course of her employment, as Ark. Code Ann. § 11-9-102 (Supp. 2011) requires appellee to prove. Appellants argue that the Commission's decision is not supported by substantial evidence on the element of causation because Dr. Andersson's opinion on causation, upon which the Commission relied, was based on false information from appellee about how frequently she performed ultrasounds. This argument is without merit because the Commission specifically found appellee's testimony regarding her job duties to be credible and because Dr. Andersson's opinion was stated within a reasonable degree of medical certainty.

Appellee testified that she performed six to twelve ultrasounds each day and spent "all day long, all day, every day" performing ultrasounds; that performing an ultrasound took thirty to forty minutes and required her to apply constant pressure and wrist flexion; and that she started experiencing numbness, tingling, and burning in her hands as the result of performing ultrasounds. She acknowledged that for every procedure she performed, a report

¹⁰Ark. Code Ann. § 11-9-102(16)(A)(i).

¹¹*Wal-Mart Stores, Inc. v. Van Wagner*, 337 Ark. 443, 990 S.W.2d 522 (1999).

¹²*Jeter v. B.R. McGinty Mech.*, 62 Ark. App. 53, 968 S.W.2d 645 (1998).



was generated, documenting that she performed the procedure, and was electronically stored by Ouachita County Medical Center.

Melissa Pilkington, appellee's supervisor, gave testimony that contradicted appellee's description of her job duties. Pilkington testified that appellee primarily performed CT scans, not ultrasounds, and that according to the hospital's records, appellee performed only thirty-eight ultrasounds from July 2009 to mid-March 2010, which averaged only six ultrasounds per month and constituted just two percent of the total number of ultrasounds performed during that period. However, the hospital records Pilkington referred to for her testimony were not entered into evidence at the hearing or otherwise made a part of the record.

It is well settled that determining the weight and credibility to be given a witness's testimony is within the sole province of the Commission.¹³ Appellate courts defer to the Commission's findings on what testimony it deems to be credible, and it is within the Commission's province to reconcile conflicting evidence and to determine the true facts.¹⁴ The Commission is not required to believe the testimony of any particular witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief.¹⁵ The Commission chose to believe the testimony of appellee, making a specific

¹³*Farmers Co-op. v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002); see also *Stephens Truck Lines v. Millican*, 58 Ark. App. 275, 950 S.W.2d 472 (1997)(finding that employer's argument, that there were inconsistencies in employee's testimony that rendered it unworthy of belief, went to the weight and credibility of testimony, a matter exclusively within the province of the Commission).

¹⁴*Fayetteville Sch. Dist. v. Kunzelman*, 93 Ark. App. 160, 217 S.W.3d 149 (2005).

¹⁵*Farmers Co-op.*, *supra*.



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finding that she testified credibly concerning her job duties. It follows, therefore, that Dr. Andersson's opinion would not be rendered invalid simply because it might have been based to some extent on appellee's description of her job duties.

Appellee testified that she talked at great length about her job duties with Dr. Andersson and stated that she was the source of whatever information Dr. Andersson had concerning her job duties. However, the record does not contain evidence as to exactly what appellee told Dr. Andersson, or what, if any, importance it had in the formation of Dr. Andersson's opinion on causation, and we will not speculate on those matters. Where a medical opinion is sufficiently clear to remove any reason for the trier of fact to have to guess at the cause of the injury, that opinion is stated within a reasonable degree of medical certainty.¹⁶ Here, Dr. Andersson unequivocally stated that appellee's carpal-tunnel injuries were directly related to her job as an ultrasound technician.¹⁷ Her opinion clearly states a causal link between appellee's condition and her employment duties; it is, therefore, stated within a reasonable degree of medical certainty and, along with appellee's testimony, constitutes substantial evidence in support of the Commission's decision.

Affirmed.

GRUBER and MARTIN, JJ., agree.

¹⁶*Huffy Serv. First v. Ledbetter*, 76 Ark. App. 533, 69 S.W.3d 449 (2002).

¹⁷Appellants argue that Dr. Andersson's characterization of appellee as an ultrasound technician is evidence that Andersson based her opinion on false information. However, it is undisputed that appellee did perform ultrasounds, and as noted, the Commission specifically found appellee's testimony describing her job duties to be credible.



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Friday, Eldredge & Clark, by: *Guy Alton Wade*, for appellants.

F. Mattison Thomas III, for appellee.