

ARKANSAS COURT OF APPEALS

DIVISION III

No. CA12-47

VIVIAN CUMBIE

APPELLANT

V.

BOST HUMAN DEVELOPMENT
SERVICE, INC., and CHARTIS
CLAIMS, INC.

APPELLEES

Opinion Delivered June 13, 2012

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. E913515]

AFFIRMED

CLIFF HOOFFMAN, Judge

Appellant, Vivian Cumbie, appeals the Workers' Compensation Commission's decision denying her claim for additional medical treatment. On appeal, Cumbie argues that the decision is not supported by substantial evidence because a total hip replacement is reasonable and necessary medical treatment. We affirm.

Cumbie sought additional medical treatment in the form of a total hip replacement for her admittedly compensable injury sustained in 1998. A hearing was held before an administrative law judge (ALJ) on April 21, 2011. Cumbie, who was sixty-nine years old at the time of the hearing, testified that she injured her hip on June 11, 1998, when she was involved in a car accident while working for appellee Bost. She said that she immediately sought medical care due to pain in her hip, and she developed a dark purple bruise on her hip. Cumbie was treated by several doctors since that time and had been seeing Dr. James



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Long since 2006. She stated that most of the doctors focused on her back, but Dr. Long and one other focused on her left hip. She received steroid injections from Dr. Long, which she said helped alleviate the pain for a few days. Dr. Long also performed surgery on her hip in 2009, but she stated that it did not really help. Cumbie said that, in 2010, Dr. Long recommended a total hip replacement. She testified that the insurance company sent her to see Dr. Barry Baskin. She said he gave her pain patches, but she could not take them because they made her sick. Cumbie testified that she has had to use a cane for the last few years off and on, due to her worsening hip condition. She said that her hip pain wakes her up at night, and she has fallen several times. Cumbie said that she has never been diagnosed with arthritis in her hip, degeneration in her hip joint, or avascular necrosis. She said that she was told there was a five-percent chance she would get no relief from hip-replacement surgery.

Two depositions of Dr. Long were introduced. One was taken on March 21, 2007, and the second was taken on February 18, 2011. At the time of the 2007 deposition, Dr. Long had been a practicing orthopaedic surgeon in Fort Smith for thirty-five years. Dr. Long first saw Cumbie on August 4, 2006, when she was referred to him by another doctor for pain in her buttocks on her left side. Cumbie gave Long the history of her 1998 car accident. Dr. Long stated that prior to seeing him, all of Cumbie's treatments had been directed to her low back. Dr. Long gave Cumbie injections into her left greater trochanter, which he said was over the left hip joint, the area where she was originally struck in the accident. Dr. Long said that these injections improved her symptoms dramatically and were



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the only treatments that had ever helped her pain. Dr. Long testified that Cumbie's consistent response to the treatments told him that the source of her pain was her hip, not her low back. Cumbie's diagnosis was "chronic left gluteal pain with trigger points of the greater trochanter and posterior superior iliac spine with no evidence of radiculitis or radiculopathy." In the 2007 deposition, Long said that the plan for Cumbie was to proceed with the injections and that surgery would be a last resort. Dr. Long said that Cumbie's x-rays and physical examination did not show any evidence of disease of her hip but that trochanteric bursitis will not show up on an MRI or x-ray. Dr. Long testified that on two or three occasions he had performed total hip replacements on patients who did not exhibit hip problems on imaging studies but whose hip pain improved due to the surgery.

In his 2011 deposition, Dr. Long testified that for some time he had been able to moderate Cumbie's symptoms with injections into her hip at the greater trochanter. Dr. Long performed trochanteric bursectomy surgery on Cumbie in August 2009. He said that she experienced distinct improvement in her symptoms for a while, but the symptoms gradually started to recur. At that point, Dr. Long restarted the injections, but he said the pain would return weeks or months after each injection. At the time of his deposition, he said that the injections gave Cumbie improvement for one to three months. Dr. Long said that Cumbie's x-rays still did not show any signs of overt degeneration of her hip. He testified that despite the lack of findings on her x-rays, he was now recommending hip replacement for Cumbie to try to relieve her pain. Dr. Long testified that he did not know



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if it would help her or not, but he felt that it should be tried because hip-replacement surgery was an excellent operation for relieving hip pain. Dr. Long testified that the fact that Cumbie received relief from the injections was evidence that relief of the pain around her hip caused her pain syndrome to improve, which was an objective reason why she should have a hip replacement. Dr. Long said that Cumbie had no other options left, and the hip-replacement surgery had a good chance of making her better and providing a treatment that would last. He said that surgery may reveal an inflamed or irritated joint that cannot be seen on an MRI or x-ray.

Also introduced was Dr. Barry Baskin's deposition, taken April 4, 2011. Dr. Baskin testified that he specialized in physical medicine and rehabilitation and had been in practice for more than twenty years. Cumbie was referred to him for an independent medical evaluation in May 2010. Dr. Baskin reviewed her medical records and examined her before diagnosing her with "left trochanteric bursitis of a chronic nature and left trochanteric pain status post bursectomy." Dr. Baskin said that the typical treatment for Cumbie's condition was anti-inflammatories, physical therapy, and injections; for a very protracted case, a bursectomy may be performed, which Cumbie had already had. When asked if a hip replacement would be a reasonable treatment, Dr. Baskin said that hip replacements were for patients with osteoarthritis or avascular necrosis of the hip, which Cumbie did not have. He said that hip replacements were not typically performed in the absence of objective findings on imaging studies and that he had never seen anyone have a hip replacement for



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trochanteric bursitis. He said that based on his experience working with orthopaedic surgeons and providing pre- and postoperative care to hip-replacement patients, he did not think that anyone he worked with would do a total hip replacement for Cumbie's problem. He opined that hip-replacement surgery was not a reasonable and necessary treatment for Cumbie's condition.

The ALJ filed an opinion on July 20, 2011, finding that a total hip replacement was not reasonable and necessary given the condition of Cumbie's left hip. Cumbie appealed to the Commission, which in an opinion filed November 15, 2011, affirmed and adopted the decision of the ALJ. Cumbie timely appealed to this court.

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 findings, and we affirm if the decision is supported by substantial evidence. *Robinson v. Family Dollar Stores, Inc.*, 2011 Ark. App. 172. Substantial evidence is that relevant evidence which reasonable minds might accept as adequate to support a conclusion. *Id.* The issue is not whether we might have reached a different result or whether the evidence would have supported a contrary finding; if reasonable minds could reach the Commission's conclusion, we must affirm its decision. *Id.* Arkansas Code Annotated section 11-9-508(a) (Supp. 2011) requires an employer to provide an injured employee such medical services "as may be reasonably necessary in connection with the injury received by the employee." The employee has the burden of proving by a preponderance of the evidence



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that medical treatment is reasonable and necessary. *Id.* What constitutes reasonable and necessary medical treatment is a question of fact to be determined by the Commission. *Id.*

Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. *Robinson, supra.* When the evidence is contradictory, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. *Id.* The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief; this court is foreclosed from determining the credibility and weight to be accorded to each witness's testimony. *Id.* The Commission has the authority to accept or reject a medical opinion and the authority to determine its probative value. *Id.*

In denying Cumbie's claim, the ALJ noted that her hip was normal from a neurological standpoint. The ALJ found that, based on Dr. Long's own testimony, there was no reasonable expectation that the hip replacement would provide improvement in Cumbie's condition. The ALJ agreed with Dr. Baskin that the hip replacement was not reasonable when there appeared to be nothing to correct and was intended only to address symptoms of pain.

Cumbie argues that it was error for the ALJ and the Commission to focus on the opinion of Dr. Baskin because he saw her only once, and he has never practiced in the area of orthopaedic surgery. She claims that the fact that Dr. Baskin had never seen anyone have



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a hip replacement for trochanteric bursitis is not surprising because he does not have the surgical experience that Dr. Long has. Cumbie argues that although Dr. Baskin would not recommend a total hip replacement without some type of objective findings on an x-ray or MRI, there are no tests to objectively identify bursitis or other internal derangements of the hip joint.

We hold that the Commission's decision is supported by substantial evidence. It was within the Commission's province to weigh the conflicting medical testimony and ultimately accept Dr. Baskin's opinion on the question of whether hip-replacement surgery was reasonable and necessary. Thus, we affirm the denial of additional medical treatment.

Affirmed.

GLOVER and ABRAMSON, JJ., agree.

Michael Hamby, P.A., by: *Michael Hamby*, for appellant.

Bridges, Young, Matthews & Drake PLC, by: *John P. Talbot*, for appellees.