

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA12-285

TAMMY BELCHER

APPELLANT

V.

RIVER VALLEY HEALTH & REHAB
and FIRSTCOMP INSURANCE CO.

APPELLEES

Opinion Delivered September 26, 2012

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. G003916]

AFFIRMED

ROBIN F. WYNNE, Judge

Tammy Belcher appeals from a decision of the Arkansas Workers' Compensation Commission denying her claim for additional medical benefits. In her brief, she argues that the Commission's decision is not supported by substantial evidence. We affirm the decision of the Commission.

Appellant sustained a compensable injury to her low back on April 30, 2010, while she was transferring a patient. On May 3, 2010, she sought treatment at the Cooper Clinic and reported constant, sharp pain in her low back and numbness in both legs. She denied any previous similar symptoms. Appellant disclosed that she had been diagnosed with a bulging disc eighteen years earlier but denied any problems related to that diagnosis. Dr. Terry Clark diagnosed appellant with a lumbar strain and recommended treatment with physical therapy and pain medication. Appellant was returned to work with restrictions.

Appellant also treated with Dr. Keith Holder. An MRI performed on July 19, 2010,



revealed disc desiccation at L5-S1 with a minimal disc bulge. There was no canal stenosis, nor was there focal-disc protrusion. Appellant underwent a functional-capacity evaluation on July 29, 2010. The evaluator determined that appellant did not provide full physical effort during testing and that she gave unreliable subjective reports of pain and associated limitations. On August 18, 2010, Dr. Holder stated in a note that appellant's subjective complaints of pain exceeded her objective findings. Dr. Holder declared appellant to be at maximum-medical improvement and assessed a zero-percent impairment rating. Appellant was returned to work without restrictions and released from Dr. Holder's care.

Appellant reported to St. Edward's Mercy Medical Center on September 22, 2010, complaining of back pain following an attempt to move furniture at home. She requested and was granted a one-time change of physician to Dr. Thomas Cheyne. Dr. Cheyne examined appellant on November 5, 2010. Appellant reported chronic lower-back pain with occasional "shooting pains" down her legs. Dr. Cheyne diagnosed a lumbar strain and prescribed pain medications that were different from the ones previously prescribed for appellant and a home-exercise program.

Appellees declined to pay for the treatment recommended by Dr. Cheyne, and appellant filed a claim with the Commission requesting additional medical benefits. Appellant testified before the Commission that she is unable to sit or walk for a long period of time and that she is unable to lift anything over twenty pounds. She denied doing anything to reinjure her back. Following the hearing, an administrative law judge (ALJ) filed an opinion in which she denied appellant's claim for additional medical treatment because the treatment



recommended by Dr. Cheyne was similar to the treatment appellant had already received. Appellant appealed to the Commission, which affirmed and adopted the opinion of the ALJ. She has now appealed to this court.

In reviewing a decision of the Commission, this court views the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings and affirms those findings if they are supported by substantial evidence, which is evidence a reasonable person might accept as adequate to support a conclusion. *Castaneda v. Lexicon, Inc.*, 2012 Ark. App. 103. This court will not reverse the Commission's decision unless it is convinced that fair-minded people with the same facts before them could not have reached the same conclusions reached by the Commission. *Id.* In a case such as this one, where the Commission denies benefits because a claimant failed to meet his or her burden of proof, we affirm if the Commission's decision displays a substantial basis for the denial of relief. *Id.*

The sole issue to be determined on appeal is whether the Commission's decision to deny appellant's claim for additional medical benefits displays a substantial basis for the denial of the relief sought by appellant. Arkansas Code Annotated section 11-9-508(a) (Repl. 2012) 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 that medical treatment is reasonable and necessary. *Stone v. Dollar Gen. Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005). What constitutes reasonable and necessary medical treatment is a



question of fact to be determined by the Commission. *Bohannon v. Wal-Mart Stores, Inc.*, 102 Ark. App. 37, 279 S.W.3d 502 (2008).

As noted in the ALJ's opinion, which was affirmed and adopted by the Commission, the treatment recommended by Dr. Cheyne is similar to the conservative treatment appellant received from Dr. Clark and Dr. Holder. The ALJ also states that the treatment by Dr. Clark and Dr. Holder was done over a period of time sufficient for appellant to recover from her lumbar strain. Following that treatment, Dr. Holder released appellant from his care.

The Commission has the duty of weighing the medical evidence as it does any other evidence. *Jones v. Wal-Mart Stores, Inc.*, 100 Ark. App. 17, 262 S.W.3d 630 (2007). The interpretation given to medical evidence by the Commission has the weight and force of a jury verdict, and this court is powerless to reverse the Commission's decision regarding which medical evidence it chooses to accept when that evidence is conflicting. *Cooper Standard Auto., Inc. v. Kelley*, 2009 Ark. App. 552, 337 S.W.3d 542. In this case, the Commission elected to credit Dr. Holder's August 18, 2010 note—in which he stated that appellant's subjective complaints of pain exceeded her objective findings, returned her to work without restrictions, and released her from his care—over Dr. Cheyne's report recommending conservative treatment substantially similar to that which appellant had already received. We hold that the Commission's decision displays a substantial basis for the denial of the relief sought by appellant. The decision of the Commission is affirmed.

Affirmed.

HART and GRUBER, JJ., agree.

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

Anderson, Murphy & Hopkins, LLP, by: *Randy P. Murphy* and *Kyle E. Burton*, for appellee.