

# ARKANSAS COURT OF APPEALS

DIVISION I  
No. CA11-859

TOMMY R. KIMBLE

APPELLANT

V.

HINO MOTORS MFG. USA, INC.,  
TOKIO MARINE MGMT., and DEATH  
& PERMANENT TOTAL DISABILITY  
FUND

APPELLEES

Opinion Delivered November 7, 2012

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION  
[NO. F801104]

AFFIRMED

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**WAYMOND M. BROWN, Judge**

Appellant Tommy Kimble appeals the Workers' Compensation Commission's decision that found that he failed to prove by a preponderance of the evidence that he suffered a compensable heart attack while working for appellee Hino Motors. Kimble argues on appeal that the Commission's decision is not supported by the evidence. We affirm.<sup>1</sup>

In appeals involving claims for workers' compensation, this court views the evidence and all reasonable inferences deducible therefrom in the light most favorable to the

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<sup>1</sup>This is the third time this case is before us. In *Kimble v. Hino Motors Mfg. USA, Inc.*, 2012 Ark. App. 178, we ordered rebriefing due to deficiencies in Kimble's brief and addendum. We subsequently remanded the case for a supplemental addendum in *Kimble v. Hino Motors Mfg. USA, Inc.*, 2012 Ark. App. 376.

Commission's decision and affirms the decision if it is supported by substantial evidence.<sup>2</sup> Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>3</sup> The issue is not whether the appellate court might have reached a different result from the Commission; if reasonable minds could reach the result found by the Commission, the appellate court must affirm the decision.<sup>4</sup> 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 arrived at by the Commission.<sup>5</sup>

Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission.<sup>6</sup> When there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts.<sup>7</sup> The Commission is not required to believe the testimony of appellee or any other witness, but may accept and translate into findings of fact

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<sup>2</sup>See *Kimbell v. Ass'n of Rehab Indus. & Bus. Companion Prop. & Cas.*, 366 Ark. 297, 235 S.W.3d 499 (2006).

<sup>3</sup>*Id.*

<sup>4</sup>*Id.*

<sup>5</sup>*Dorris v. Townsends of Ark., Inc.*, 93 Ark. App. 208, 218 S.W.3d 351 (2005).

<sup>6</sup>*Ayers Drywall & Insulation v. Carey*, 2009 Ark. App. 749, 352 S.W.3d 334.

<sup>7</sup> *Id.*

only those portions of the testimony that it deems worthy of belief.<sup>8</sup> Thus, we are foreclosed from determining the credibility and weight to be accorded to each witness's testimony.<sup>9</sup>

The issue of compensability is controlled by the provisions of Arkansas Code Annotated section 11-9-114,<sup>10</sup> and the standard of proof in heart-attack cases is high, as follows:

(a) A cardiovascular, coronary, pulmonary, respiratory, or cerebrovascular accident or myocardial infarction causing injury, illness, or death is a compensable injury only if, in relation to other factors contributing to the physical harm, an accident is the major cause of the physical harm.

(b)(1) An injury or disease included in subsection (a) of this section shall not be deemed to be a compensable injury unless it is shown that the exertion of the work necessary to precipitate the disability or death was extraordinary and unusual in comparison to the employee's usual work in the course of the employee's regular employment or, alternately, that some unusual and unpredicted incident occurred which is found to have been the major cause of the physical harm.

(2) Stress, physical or mental, shall not be considered in determining whether the employee or claimant has met his or her burden of proof.

Subsection (a) requires that the relation to all factors contributing to the ultimate physical harm and "accident" must be the major cause of the physical harm. Subsection (b) focuses on the circumstances surrounding the incident and requires that the exertion of the work necessary to precipitate the disability or death must be extraordinary and unusual in comparison to the employee's usual work in the course of the employee's regular employment

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<sup>8</sup> *Id.*

<sup>9</sup> *Arbaugh v. AG Processing, Inc.*, 360 Ark. 491, 202 S.W.3d 519 (2005).

<sup>10</sup>(Repl. 2002).

or, alternatively, that some unusual and unpredicted incident occurred that was the major cause of the physical harm.<sup>11</sup>

The record shows that Kimble clocked into work at 5:57 a.m. on December 21, 2006.

At that time, he was employed as a team leader. Kimble explained his job duties as follows:

My duties and responsibilities as a Team Leader was number one was production, the quality of our products and our parts. It was really the direct supervision of our machine operators, to make sure the line started on time every morning and check the quality of the parts, just in general to make sure the employees were doing their job and to answer directly to my supervisor, Mr. [Greg] Long. I performed those tasks up until the 21st of December of 2006.

He stated that between October and December 2006 Hino Motors was in “start-up” and that his hours gradually increased as the plant attempted to go to full production.<sup>12</sup> He testified that between December 5 and December 21, 2006, he performed spot checks for ten hours a day. According to Kimble, spot checks consisted of picking a thirteen to fifteen pound knuckle up off the line and taking it to a table. Once at the table, he would use several instruments to measure the knuckle, turning it several times to perform a quality check on it. He said that he would also have checks in the morning that required him to place seventy-five to one hundred knuckles on a cart and transport them to the lab.

Kimble testified that there were some machine problems on December 21, 2006, which caused him to cut his lunch short. He stated that shortly after lunch, between 11:00 a.m. and noon, he gradually began feeling bad. According to Kimble, he was having arm

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<sup>11</sup>See *J Mar Express, Inc. v. Poteete*, 2011 Ark. App. 122, 381 S.W.3d 159.

<sup>12</sup>He worked approximately 8.5 hours per day until December 5, 2006, when he began working 10.5 hours per day.

pain, was nauseated, and was sweating. He said that he continued to do his checks, but that later that day, he was contacted by Long, who wanted Kimble to go to the dock and sort defective parts.<sup>13</sup> Kimble stated that he took two other employees with him to the dock and that there was a third employee driving a forklift who was retrieving the containers that held the parts. Kimble said that he and the other two employees opened the containers, took out the knuckles, and sorted them so that they could be taken to another staging area to be rechecked. He testified:

[I]t was several hundred parts. Someone would bring them on a forklift. They were wrapped in plastic, and we would have to spread them out in an area about the size of this room. We were on the shipping dock, and these parts were kinda spread out everywhere. The job became so overwhelming that day that Greg had to call in probably 10 additional people besides myself and my two workers to try to wrap it up. It was approximately 2:30 p.m. that I was sweating on a very chilly December day. My arm was hurting and I couldn't hardly raise it above my head. Yes, for the record I am pointing to my left shoulder. I'm right-handed. I was also nauseated some and things were starting to get cloudy to me as far as my thought process. One of my co-workers asked me a question, and I was delayed in answering him. He said, "Tommy, what's wrong?" I didn't know what was going on at this point, but I knew I didn't feel well at all. So I told my supervisor that I didn't feel well and I needed to get to a doctor. I needed an ambulance or some way to get to a doctor at that point because I knew I wasn't feeling normal.

Kimble stated that he was eventually transported to Crittenden Memorial Hospital (CMH) at 4:00 p.m. in his own vehicle by Terry Brown, the Safety Manager. An EKG performed at CMH indicated that Kimble was having a severe heart attack. He was subsequently transported to Methodist Hospital (MH), where he was initially seen by Dr. Bennett Rudorfer. Kimble was diagnosed with acute myocardial infarction and underwent urgent left

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<sup>13</sup>Kimble said that he asked Long if another employee could perform the sort, but was told no.

cardiac catheterization and stent implantation in the right coronary artery. Dr. Glenn Phillips Schoettle, Jr., performed surgical review. According to Dr. Schoettle's surgery consultation dated December 22, 2006, Kimble had a positive history of hypertension. Kimble was diagnosed with severe coronary artery disease and a coronary artery bypass graft was scheduled for December 26, 2006. He underwent surgery as planned; however, approximately eight hours later, he had to undergo a second surgery due to suffering an inferior acute myocardial infarction. He was discharged on January 2, 2007.

Dr. Rudorfer was deposed on September 30, 2009. This deposition was admitted into evidence at the hearing before the administrative law judge (ALJ) and made a part of the record. Dr. Rudorfer testified that Kimble's heart attack was the result of an acute plaque rupture. He opined that if Kimble suffered from hypertension, that it was "probably not a major contributor" to his heart attack. He stated that Kimble's heart had a number of blockages, including a sixty-percent blockage in the left main coronary artery and a one-hundred-percent blockage in the right coronary artery. According to Dr. Rudorfer, an acute heart attack occurs when "an artery that at one point was open suddenly becomes closed, or it can happen as an accumulation." He further stated that Kimble's right coronary artery was the culprit of his heart attack. Dr. Rudorfer testified that the total blockage of Kimble's right coronary artery may have occurred abruptly, even as early as the afternoon of the heart attack. He said that no one knows what causes the type of catastrophic plaque rupture Kimble suffered. He opined that the rupture could have occurred if Kimble was on Mars because no one knows what causes the rupture to occur at that time and place it occurs. Dr. Rudorfer

testified that he did not know of anything someone could do, “short of sticking . . . an object itself that would precipitate or predispose to this type of plaque rupture.”

The ALJ found that Kimble did not suffer a compensable heart attack on December 21, 2006, while working for Hino Motors. Kimble appealed the ALJ’s decision to the Commission. The Commission affirmed and adopted the ALJ’s decision in an opinion dated June 2, 2011. A timely notice of appeal followed.

Kimble contends that his situation is similar to that in *Williford v. City of North Little Rock*.<sup>14</sup> We disagree. In *Williford*, the decedent suffered a heart attack after performing the Firefighters Encounter and Agility Test, which required rigorous physical activity. The doctor who performed the autopsy on the decedent testified that it was his opinion, based on reasonable medical certainty, that the decedent sustained his heart attack during the physical workout, and that the strenuous workout was the major cause of the heart attack. In the case before us, Kimble started exhibiting symptoms of his heart attack while performing his regular job duties. Furthermore, unlike in *Williford*, Kimble does not have a medical opinion stating that the additional task of sorting through defective knuckles was the major cause of his heart attack. In fact, Dr. Rudorfer opined that no one in the medical community knew what causes the type of plaque rupture Kimble suffered. Substantial evidence supports the Commission’s decision. Accordingly, we affirm.

Affirmed.

VAUGHT, C.J., and WYNNE, J., agree.

*Alvin L. Simes, P.A.*, by: *Alvin L. Simes*, for appellant.

*Dover Dixon Horne, PLLC*, by: *Joseph H. Purvis*, for appellees.

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<sup>14</sup>62 Ark. App. 198, 969 S.W.2d 687 (1998).