

ARKANSAS COURT OF APPEALS

DIVISION II
No. CA12-909

PAUL MEADOWS

APPELLANT

V.

TYSON FOODS, INC.

APPELLEE

Opinion Delivered March 13, 2013

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [G004260]

AFFIRMED

DAVID M. GLOVER, Judge

The issue in this workers' compensation case is whether appellant Paul Meadows is entitled to permanent-partial disability benefits in excess of his permanent physical impairment. Meadows has a history of back problems—he underwent surgery in May 1998 to repair a herniated disc at L4-5, which resulted in an eight-percent impairment rating and the restriction that he work only eight hours per day. Later, in 2004, it was determined that Meadows had additional back problems in the form of a herniated disc at L2-3 and a disc bulge at L3-4; he did not undergo surgery for those problems. On February 22, 2010, Meadows suffered an admittedly compensable back injury while in the employ of appellee Tyson Foods. An MRI indicated disc bulges at L3-4 and L4-5; surgery was discussed, but Meadows was treated conservatively by his neurosurgeon, Dr. Standefer, with medication and steroid injections. It was Dr. Standefer's opinion that no surgical intervention was necessary. On October 25, 2010, Dr. Standefer determined that



Meadows had reached maximum medical improvement (MMI) and released him to return on an as-needed basis. On December 13, 2010, Dr. Standefer assessed that Meadows was entitled to a ten-percent impairment rating to the body as a whole for his previous surgery (which Tyson does not dispute) and stated that he was entitled to an additional one-percent impairment rating to the body as a whole for his current disc protrusion at L3-4.

Meadows filed a claim contending that he was entitled to permanent-partial disability benefits, including an impairment rating and wage loss as a result of his compensable injury. Initially, the administrative law judge (ALJ) denied Meadows's claim on the basis that the disc protrusion for which he was assigned a one-percent impairment rating in 2010 was in existence in 2004. The Commission reversed that decision, finding that Meadows had proved that he sustained a one-percent permanent-impairment rating as a result of the February 22, 2010 injury. The Commission then remanded the case to the ALJ to determine whether Meadows was entitled to wage-loss benefits exceeding the one-percent anatomical impairment.

On remand, the ALJ found that Meadows was disqualified from receiving wage-loss benefits pursuant to Arkansas Code Annotated section 11-9-522(b) and (c) because he was discharged from his work for misconduct in connection with the work, which Meadows did not dispute. The Commission then affirmed and adopted the ALJ's opinion. Meadows now appeals, arguing that the Commission misinterpreted Arkansas Code Annotated section 11-9-522 because our supreme court has held that misconduct of an injured worker while still in the healing period does not bar entitlement to disability



benefits when the employer had not offered employment subsequent to the end of the healing period. We affirm the Commission's decision.

In *Queen v. Nortel Networks, Inc.*, 2012 Ark. App. 188, at 3 (citations omitted), this court held:

Typically, on appeal to this court, we review only the decision of the Commission, not that of the ALJ. In this case, the Commission affirmed and adopted the ALJ's opinion as its own, which it is permitted to do under Arkansas law. Moreover, in so doing, the Commission makes the ALJ's findings and conclusions the findings and conclusions of the Commission. Therefore, for the purpose of our review, we consider both the ALJ's opinion and the Commission's majority opinion.

In appeals involving claims for workers' compensation, we view the evidence in the light most favorable to the Commission's decision and affirm the decision if it is supported by substantial evidence. Substantial evidence exists if reasonable minds could reach the Commission's conclusion. 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.

When an appeal is taken from the denial of a claim for benefits by the Workers' Compensation Commission, the substantial-evidence standard of review requires that we affirm if the Commission's opinion contains a substantial basis for the denial of relief. *Contreras v. Pinnacle Foods Corp.*, 2011 Ark. App. 780. Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. *Cedar Chem. Co. v. Knight*, 372 Ark. 233, 273 S.W.3d 473 (2008). When there are contradictions in the evidence, 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. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002).

In *SSI, Inc. v. Lohman*, 98 Ark. App. 294, 297, 254 S.W.3d 804, 808 (2007)

(citations omitted), this court held:

Wage-loss disability is the extent to which a compensable injury has affected the claimant's ability to earn a livelihood. The Commission is charged with the duty of determining disability based upon consideration of medical evidence and other matters affecting wage loss, such as the claimant's age, education, and work experience. The claimant's motivation to return to work, or lack thereof, is a factor that can be considered when determining an employee's future earning capacity.

Arkansas Code Annotated section 11-9-522 (Repl. 2012), the provision at issue in this appeal, provides in pertinent part:

(a) A permanent partial disability not scheduled in § 11-9-521 shall be apportioned to the body as a whole, which shall have a value of four hundred fifty (450) weeks, and there shall be paid compensation to the injured employee for the proportionate loss of use of the body as a whole resulting from the injury.

(b)(1) In considering claims for permanent partial disability benefits in excess of the employee's percentage of permanent physical impairment, the Workers' Compensation Commission may take into account, in addition to the percentage of permanent physical impairment, such factors as the employee's age, education, work experience, and other matters reasonably expected to affect his or her future earning capacity.

(2) However, so long as an employee, subsequent to his or her injury, has returned to work, has obtained other employment, or has a bona fide and reasonably obtainable offer to be employed at wages equal to or greater than his or her average weekly wage at the time of the accident, he or she shall not be entitled to permanent partial disability benefits in excess of the percentage of permanent physical impairment established by a preponderance of the medical testimony and evidence.



(c)(1) The employer or his or her workers' compensation insurance carrier shall have the burden of proving the employee's employment, or the employee's receipt of a bona fide offer to be employed, at wages equal to or greater than his or her average weekly wage at the time of the accident.

(2) Included in the stated intent of this section is to enable an employer to reduce or diminish payments of benefits for a functional disability, disability in excess of permanent physical impairment, which, in fact, no longer exists, or exists because of discharge for misconduct in connection with the work, or because the employee left his or her work voluntarily and without good cause connected to the work.

In support of his argument, Meadows cites *Tyson Poultry, Inc. v. Narvaiz*, 2012 Ark. 118, 388 S.W.3d 16. However, *Narvaiz* is distinguishable from the present case. *Narvaiz* dealt with a different statutory provision, Arkansas Code Annotated section 11-9-526, not Arkansas Code Annotated section 11-9-522. Furthermore, section 11-9-522 contains a provision not found in section 11-9-526—that the stated intent of the section is “to enable an employer to reduce or diminish payments of benefits for . . . disability in excess of permanent physical impairment, which, in fact, . . . exists because of discharge for misconduct in connection with the work” Here, Meadows does not dispute that he was terminated for misconduct in connection with the work—he falsified the calibration of the scales, which caused incorrect product weight for 370 cases of product in the freezer and seventy cases that had already been shipped to a customer, a violation of USDA weight policy.

Meadows further contends that section 11-9-522 cannot be applied until he has reached maximum medical improvement. He argues that after he reached MMI, Tyson did not provide a bona fide job offer, and he did not return to work or obtain other employment. Reaching MMI is simply not a provision of the statute. The statute provides that, subsequent to an employee's injury, one of three contingencies must exist:



he has returned to work, he has obtained other employment, or he has a bona fide and reasonably obtainable offer to be employed at wages equal to or greater than his or her average weekly wage at the time of the accident. While it is true that Meadows did not obtain other employment and did not have a bona fide offer of employment, Meadows had in fact, subsequent to the injury, returned to work, which is all that was required by the statute. The basic rule of statutory construction is to give effect to the intent of the General Assembly. *Arkansas Comprehensive Health Ins. Pool v. Denton*, 374 Ark. 162, 286 S.W.3d 698 (2008). In determining the meaning of a statute, the first rule is to construe it just as it reads, giving the words their ordinary and usually accepted meaning in common language. *Id.* When the language of a statute is plain and unambiguous and conveys a clear and definite meaning, there is no need to resort to rules of statutory construction. *Id.*

There was testimony from Tyson's human-resources manager, Glenda Swearengin, that Meadows would still be employed by Tyson had he not falsified the scale-calibration tests (which resulted in boxes of product not being properly weighed). The ALJ found that Tyson had accommodated Meadows's previous restrictions of not working more than eight hours per day, a fact Meadows acknowledged. The ALJ further found that following the 2010 injury, when the twenty-pound-lifting restriction was imposed, Tyson determined that Meadows could perform all aspects of his job except calibrating the scales, which required lifting a twenty-five-pound weight, and that Meadows was instructed there were a number of people available to assist him with any lifting over his restriction. Swearengin said that Meadows never indicated to her that he was not receiving assistance from other employees, and had he told her that, she would have addressed the issue. The



ALJ also found it important that Meadows did not testify that he had attempted to obtain help lifting the weight and had been denied. Furthermore, Meadows testified that he was able to perform his job while standing and walking, and he was allowed to sit if he felt that he needed to do so. While Dr. Standefer opined in his December 13, 2010 letter that he did not believe Meadows could resume his previous work with Tyson, the ALJ found that this opinion was entitled to little weight because nothing in the record indicated that Dr. Standefer had any knowledge of Meadows's job duties or whether those duties could be modified to satisfy his restrictions. Instead, the ALJ found Swearengin's testimony (that without his termination for misconduct, Meadows would have retained a job with Tyson within any work restrictions that had been placed upon him) to be credible and entitled to great weight, especially since Tyson had previously demonstrated on two different occasions that it would follow Meadows's work restrictions. Such credibility determinations are for the fact-finder, the ALJ in this case, to make; this court is bound by them. Simply put, under Arkansas Code Annotated section 11-9-522, because Meadows was terminated from his job due to his own misconduct in connection with the job, he is not entitled to permanent-partial disability benefits in excess of his one-percent permanent physical impairment.

Affirmed.

WALMSLEY and BROWN, JJ., agree.

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

Ledbetter, Cogbill, Arnold & Harrison, LLP., by: *E. Diane Graham* and *Victor L. Crowell*, for appellee.