

# ARKANSAS COURT OF APPEALS

DIVISION III

No. CA12-765

MAE WEAVER

APPELLANT

V.

ARKANSAS DEPARTMENT OF  
CORRECTION and PUBLIC  
EMPLOYEE CLAIMS DIVISION

APPELLEES

Opinion Delivered March 6, 2013

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION  
[NO. G103215]

AFFIRMED

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**ROBIN F. WYNNE, Judge**

Mae Weaver appeals from the Arkansas Workers' Compensation Commission's opinion denying her claim for benefits for a right-shoulder injury she alleges was sustained in the course and scope of her employment. She argues on appeal that the Commission's decision is not supported by substantial evidence. We disagree and affirm.

Weaver worked as a correctional officer for the Arkansas Department of Correction. In 2011, she filed a claim for benefits with the Commission, alleging that she sustained an injury to her right shoulder on October 13, 2010, while hauling a basket containing ten guns up to the guard tower where she was stationed. Appellees controverted the claim in its entirety. The medical records show that Weaver first sought treatment for the injury on November 4, 2010, from her family physician, Dr. Sudhir Kumar. Dr. Kumar's report from that visit states that Weaver appeared complaining of pain in both shoulders, worse in the



right, and there was no trauma. Weaver testified before the Commission that Dr. Kumar never asked her how she had injured her shoulder. She also testified that she did not see a doctor until November 4, 2010, because she attempted to care for the injury herself but her symptoms did not improve. A January 14, 2011 office note from Dr. Khosrow Malecki states that Weaver reported left-shoulder pain in the previous few months and right-shoulder pain for the previous two years. An MRI of Weaver's right shoulder revealed a full-thickness tear of the rotator cuff. Surgery was recommended for the tear.

Weaver subsequently saw Dr. Jay Lipke. In an April 11, 2011 report, Dr. Lipke stated that appellant reported that she injured her shoulder in a fall on October 1, 2010, with increasing symptoms thereafter. Weaver explained at the hearing before the Commission that she told Dr. Lipke about a fall but did not attribute her shoulder pain to that incident, and that Dr. Lipke was mistaken in referencing October 1, 2010, instead of October 13, 2010. A May 16, 2011 report from Dr. Lipke contains an addendum stating that Weaver later related that she felt something pull or tear in her shoulder while lifting guns and that Dr. Lipke was in error in stating that the injury was caused by a fall. Dr. Lipke also stated in the addendum that a lifting injury could cause a rotator cuff tear.

On January 21, 2011, Weaver filed a statement with the Department of Correction in which she reported the pulling incident, alluded to a previous shoulder injury, and stated that the incident with the guns could be a "contributing factor" to her right-shoulder pain. Appellees submitted evidence that Weaver sustained a right-shoulder injury in 2009 during an altercation with an inmate. Weaver testified that she saw a doctor one time following that



incident and was returned to work without restrictions. She testified further that she did not receive any additional treatment for her shoulder until November 4, 2010.

Weaver's supervisor, Captain L. Beard, submitted a letter to Major C. Kelley dated February 8, 2011, stating that Weaver reported that she could not pull the guns because they were too heavy due to her 2009 injury. Major Kelley subsequently wrote a letter to Deputy Warden D. Payne stating that after Weaver told Major Kelley that she had injured her shoulder lifting guns, the major told Weaver that someone would be disciplined due to the failure to properly report the injury. According to Major Kelley, Weaver asked on two separate occasions after he made that statement that he "forget" she had reported the incident. Cassandra Summers, who worked at the same facility as Weaver, testified in a deposition that Weaver called her one day at work and told her to be careful with the guns because they might hurt her arm like they had hurt Weaver's arm. Charles Ballard, who Weaver testified rode to and from work with her, testified in his deposition that Weaver had never specifically mentioned injuring her shoulder.

In an opinion filed on January 18, 2012, an administrative law judge (ALJ) denied Weaver's claim. Weaver appealed to the Commission, which affirmed and adopted the decision of the ALJ. This appeal followed.

When reviewing a decision of the Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the findings of the Commission. *Greene v. Cockram Concrete Co.*, 2012 Ark. App. 691. This court must affirm the decision of the Commission if it is supported by substantial evidence. *Id.* Substantial



evidence is that evidence which a reasonable mind might accept as adequate to support a conclusion of the Commission. *Id.* The issue on appeal is not whether the appellate court 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, the appellate court must affirm its decision. *Id.*

In her decision denying Weaver's claim, which was affirmed and adopted by the Commission, the ALJ notes that the initial report from Dr. Kumar reflects that Weaver reported bilateral shoulder problems with no trauma. The ALJ further notes that the only medical opinion offered by Weaver was the "correction" by Dr. Lipke that, according to the ALJ, is based on Weaver's subjective complaints and is speculative. Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. *Pearson v. Worksource*, 2012 Ark. 406, \_\_\_ S.W.3d \_\_\_. It is within the Commission's province to reconcile conflicting evidence and determine the 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. *Id.* It is also within the Commission's province to weigh all the medical evidence and to determine what is most credible. *Sanchez v. Pork Group, Inc.*, 2012 Ark. App. 570.

A workers' compensation claimant bears the burden of proving that his or her injury was the result of an accident that arose in the course of his employment and that it grew out of, or resulted from, the employment. *Delaplaine Farm Ctr. v. Crafton*, 2011 Ark. App. 202,



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382 S.W.3d 689. Here, the only evidence linking Weaver's injury to her work activities is her testimony and her statements to Dr. Lipke. The Commission, by denying the claim, implicitly determined that this evidence was not credible. As a result, the Commission found that Weaver failed to carry her burden of proof. The Commission's decision is supported by substantial evidence and is affirmed.

Affirmed.

GLADWIN, C.J., and HIXSON, J., agree.

*Nickels' Law Firm*, by: *B. Norman Williamson*, for appellant.

*Terry Don Lucy*, for appellees.