

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA12-1017

ORA CARRUTH

APPELLANT

V.

ARKANSAS DEPARTMENT OF
CORRECTION and PUBLIC
EMPLOYEE CLAIMS DIVISION

APPELLEES

Opinion Delivered May 15, 2013

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [NO. F508480]

AFFIRMED

BRANDON J. HARRISON, Judge

Ora Carruth appeals the decision of the Workers' Compensation Commission that reversed the Administrative Law Judge (ALJ) and found that she had failed to prove, by a preponderance of the evidence, that her compensable injuries rendered her permanently and totally disabled. She argues that the Commission's decision is not supported by substantial evidence and must be reversed. We affirm the Commission's decision.

Carruth, while employed by the Arkansas Department of Correction as a security guard, was injured while running as part of her biannual physical. Her injuries were described by the Commission this way:

The claimant sustained bilateral compensable knee injuries on August 5, 2005, for which she has received indemnity and medical benefits. As a result of these injuries, the claimant first underwent operative care in the form of a right knee arthroscopy on August 31, 2005. When her right knee failed to improve, the claimant underwent a total right knee replacement on January 30, 2007. The claimant was assessed a 50%



permanent physical impairment to the right lower extremity once she reached maximum medical improvement. Although she attempted to put it off as long as possible, the claimant eventually underwent a total left knee replacement on October 22, 2010. On December 3, 2010, the claimant was discharged with a 50% impairment of the left lower extremity.

After a hearing to determine Carruth's entitlement to permanent total-disability benefits, the ALJ found that Carruth was permanently and totally disabled.

The Department of Correction and the Public Employee Claims Division appealed the decision to the Commission, which reversed the ALJ and found that Carruth had failed to prove that she was physically unable to earn any meaningful wages. The Commission noted that Carruth was seventy years old, that she had obtained her high school diploma and had completed some college courses, and that before her employment with the Department of Correction, her work history consisted primarily of sitting with elderly patients. According to Carruth's own testimony, she is able to drive, perform light housework, operate her riding lawn mower, shop, and socialize with her friends, including taking weekly trips to Mississippi casinos. The Commission also noted that Carruth had chosen to retire while she was still in her healing period and before either of her knee-replacement surgeries.

The Commission also recited the results of a Functional Capacity Evaluation, performed on 7 December 2011, which showed that Carruth was physically capable of working in the medium-duty classification of work. Carruth was also evaluated by Heather Taylor, a vocational-rehabilitation consultant, on 22 November 2011, who opined that

Carruth's potential to return to the workforce on a full time basis is significantly diminished. Her advanced age and specific functional abilities are two major issues. My labor market research did not identify any jobs that she would qualify for from educational, work history, or functional limitation standpoints. Additionally, Ms.



Carruth told me that she did not believe she could physically work and expressed no interest in pursuing employment. . . . Part time work in sedentary type, unskilled jobs may be something she would want to consider to supplement her retirement income.

The Commission concluded that “[g]iven the evidence that [Carruth] is physically capable of working in a medium-duty capacity, her testimony about frequent trips to the casinos, as well as her ability to resume her previous work as a sitter for the elderly,” she had failed to prove by a preponderance of the evidence that her injuries had rendered her permanently and totally disabled. Carruth timely appealed the Commission’s order to this court.

This court views the evidence and all reasonable inferences therefrom in the light most favorable to the Commission’s decision and affirms that decision when it is supported by substantial evidence. *Honeysuckle v. Curtis H. Stout, Inc.*, 2010 Ark. 328, 368 S.W.3d 64. Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.* There may be substantial evidence to support the Commission’s decision even though we might have reached a different conclusion had we sat as the trier of fact or heard the case de novo. *Id.* 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 Commission’s conclusions. *Id.* 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).

Carruth argues that the Commission’s decision that she is not permanently and totally disabled is based on speculation and conjecture. “Permanent total disability” means the inability, because of compensable injury or occupational disease, to earn any meaningful wages



in the same or other employment. Ark. Code Ann. § 11-9-519(e)(1) (Repl. 2012). Carruth bears the burden of meeting the statutory definition. See Ark. Code Ann. § 11-9-519(e)(2). Some factors to be considered when evaluating the existence of a permanent and total disability include the claimant's age, education, work experience, medical evidence, motivation, and credibility. *Cross v. Crawford Mem'l Hosp.*, 54 Ark. App. 130, 923 S.W.2d 886 (1996).

To support her argument that she is permanently and totally disabled, Carruth cites Taylor's "expert" opinion that she was not qualified or able to return to "substantial gainful employment." Carruth contends that the Commission failed to give any weight to Taylor's opinion and rejected it without explanation. Carruth also argues that the Commission speculated when it stated that she could return to her previous work sitting with the elderly. Carruth insists that her "bad days combine with her age, experience and lack of transferable skills to make her unemployable."

We hold that the Commission's decision is supported by substantial evidence. Regarding Carruth's assertion that the Commission failed to give any weight to Taylor's opinion, we believe the Commission's opinion did consider Taylor's evaluation. And the ultimate persuasive value of Taylor's opinion was for the Commission, not us, to determine. See *Cedar Chem. Co.*, *supra*. We also hold that the Commission's opinion was not based solely on speculation; its decision is supported by the Functional Capacity Evaluation, which showed that Carruth was capable of working in a medium-duty capacity, and Taylor's assessment, which suggested that Carruth seek part-time work in a sedentary capacity to supplement her



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retirement income. Finally, Carruth's own testimony provided some additional support to the Commission's decision. On the record as a whole, substantial evidence supports the Commission's decision, so we affirm.

Affirmed.

WYNNE and WHITEAKER, JJ., agree.

Kenneth A. Olsen, for appellant.

Richard S. Smith, for appellees.