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ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-13-883

ROBERT LEE DISMUTE APPELLANT V. POTLATCH CORPORATION, RISK MANAGEMENT RESOURCES, and SENTRY INSURANCE COMPANY APPELLEES	**Opinion Delivered** MARCH 12, 2014 APPEAL FROM THE ARKANSAS WORKERS' COMPENSATION COMMISSION, [NO. G006695] AFFIRMED

KENNETH S. HIXSON, Judge

Appellant Robert Dismute filed a workers' compensation claim, alleging that he sustained a compensable back injury while working for appellee Potlatch Corporation on July 22, 2010. The Workers' Compensation Commission denied benefits, finding that Mr. Dismute failed to prove that he sustained a compensable injury on that day. On appeal, Mr. Dismute challenges the sufficiency of the evidence supporting the Commission's decision. We affirm.

In reviewing a decision of the Workers' Compensation Commission, we view the evidence and all reasonable inferences in the light most favorable to the Commission's findings, and the decision will be affirmed if it is supported by substantial evidence. *Webb v. Letha's Pies*, 2014 Ark. App. 57. Substantial evidence exists if reasonable minds could reach the Commission's conclusion. *Id.* When a claim is denied due to the claimant's failure to

prove entitlement to compensation by a preponderance of the evidence, the substantial-evidence standard of review requires this court to affirm if the Commission's opinion displays a substantial basis for the denial of relief. *Flynn v. Sw. Catering Co.*, 2010 Ark. App. 766, 379 S.W.3d 670. Where there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. *Cedar Chem. Co. v. Knight*, 372 Ark. 233, 273 S.W.3d 473 (2008).

Mr. Dismute worked as a laborer in a sawmill for Potlatch Corporation from 1977 until 2010. Mr. Dismute sustained various work-related injuries over the course of his employment. On September 20, 2008, Mr. Dismute injured his back while shoveling and using a "tater digger." The appellee accepted that claim as compensable, and Mr. Dismute received medical benefits and temporary total disability benefits. Potlatch also covered a ten-percent permanent impairment rating (five-percent from Dr. Bruffett on May 13, 2009, for an L2–L3 annular tear, and five-percent from Dr. Chakales on January 19, 2010, for an L5–S1 annular tear). Mr. Dismute underwent two functional capacity evaluations that were deemed invalid for lack of a consistent effort. After a third functional capacity evaluation, Mr. Dismute was returned to work for Potlatch on March 17, 2010, in the medium work category lifting no more than fifty pounds.

Mr. Dismute claimed that he sustained another compensable back injury while working for Potlatch on July 22, 2010, and that claim was controverted. Mr. Dismute testified that on that day he was assigned to straighten and lift lumber to be picked up by a forklift. In his deposition, he testified that when he started to straighten the lumber, he felt

back pain and went down. In his testimony at the hearing, he stated that he went down as he was trying to lift the lumber.

Bethany Brukhardt, the human resource manager for Potlatch, testified about the incident on July 22, 2010. She stated that on that day Mr. Dismute complained that he could not perform his assigned duties. After reviewing his restrictions, Ms. Brukhardt advised Mr. Dismute that his duties were within his restrictions and that he could do the work. Ms. Brukhardt returned to her office, and a few minutes later she was alerted that Mr. Dismute had gone down. When she arrived on the scene, Mr. Dismute was mumbling but unresponsive, so Ms. Brukhardt called an ambulance. The ambulance report stated that Mr. Dismute was "lying on side on pile of lumber, patient has chronic back pain and when pain onset patient went to position of comfort lying on stack of lumber." Ms. Brukhardt investigated the alleged accident, and after interviewing witnesses and reviewing the medical records, it was determined that Mr. Dismute had filed a fraudulent workers' compensation claim resulting in his termination on December 8, 2010.

Potlatch employee Terrance Hampton was working with Mr. Dismute on July 22, 2010. Mr. Hampton testified that he and Mr. Dismute were supposed to straighten the lumber and stack it onto the forklift. According to Mr. Hampton, before they lifted or moved any lumber he saw Mr. Dismute on the ground yelling about his back. The forklift driver, Wilton Pulley, also testified that Mr. Dismute did not lift any lumber before going down.

After being taken to the emergency room, Mr. Dismute underwent a CT scan of the head, neck, thoracic spine, and lumber spine. These tests showed degenerative changes. The report from the CT scan of the lumber spine noted "hypertrophic changes of the facets in the lower four lumber vertebrae. This is a chronic change. I don't see any evidence of a fracture or acute pathology."

To receive workers' compensation benefits for an accidental injury, a claimant must establish (1) that the injury arose out of and in the course of the employment, (2) that the injury caused internal or external harm to the body that required medical services, (3) that there is medical evidence supported by objective findings establishing the injury, and (4) that the injury was caused by a specific incident and is identifiable by the time and place of occurrence. Ark. Code Ann. § 11-9-102(4) (Repl. 2012); *Vijil v. Schlumberger Tech. Corp.*, 2012 Ark. App. 361. In the present case, the Commission specifically found that Mr. Dismute was not a credible witness, and it denied compensability for the alleged July 2010 back injury pursuant to its findings that Mr. Dismute failed to prove that he sustained an injury arising from his employment that caused bodily harm, supported by objective findings.

On appeal, Mr. Dismute argues that Potlatch failed to establish by a preponderance of the evidence that an injury did not arise out of his employment, that an injury did not cause harm to the body requiring medical services, and that the injury was not established by objective of medical findings. However, Mr. Dismute fails to recognize that it was his burden to prove a compensable injury, Ark. Code Ann. § 11-9-102(4)(E)(i), not the employer's burden to disprove one. Mr. Dismute further contends that there was a lack of clear and

convincing evidence to support the allegation that he filed a fraudulent or false claim, and he asserts that he was unjustly terminated. However, the issue of whether appellant was unjustly terminated was not before the Commission and is not before this court on appeal.

The issue before this court is whether the Commission's opinion displays a substantial basis for denying compensability, and we hold that it does. The Commission heard testimony from co-workers that Mr. Dismute was not lifting any lumber when he allegedly hurt his back, and the medical records failed to substantiate an acute back injury. Mr. Dismute posits that he established his injury with objective medical findings because the emergency-room report documents "myoligament strain of the lumbosacral spine." However, he failed to prove that the diagnosis of a lumbar strain constituted an objective finding. Moreover, Dr. Bruffett issued a letter on September 24, 2012, wherein he stated with a reasonable degree of medical certainty that Mr. Dismute did not sustain any objective change in his physical findings as a result of the alleged accident, and that the July 22, 2010 CT scan was more consistent with degenerative chronic findings than those induced by an accident. Dr. Bruffett found no objective findings resulting from the incident on July 22, 2010. On this record, we conclude that substantial evidence supports the Commission's determination that appellant failed to meet his burden of establishing a compensable injury.

Affirmed.

GLADWIN, C.J., and VAUGHT, J., agree.

Robert Lee Dismute, pro se appellant.

Dover Dixon Horne PLLC, by: *Joseph H. Purvis*, for appellees Sentry Insurance Company and Potlatch Corporation.

Bridges, Young, Matthews & Drake PLC, by: *Michael J. Dennis*, for appellees Potlatch Corporation and Risk Management Resources.