

ARKANSAS COURT OF APPEALS

DIVISION III
No. CV-13-910

CAROLYN KIRSHBERGER

APPELLANT

V.

FROST OIL COMPANY and
FEDERATED INSURANCE

APPELLEES

Opinion Delivered April 30, 2014

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. G204602]

AFFIRMED

DAVID M. GLOVER, Judge

This is a workers' compensation claim by appellant Carolyn Kirshberger (bulk-plant manager for appellee Frost Oil), who fractured her left leg in three places on May 29, 2012, while at work. The administrative law judge found Kirshberger's injury to be compensable, but the Commission reversed, finding that Kirshberger's injury was not compensable for two reasons—that she willfully and intentionally caused her injury, and that she was not performing employment services at the time of her injury. Kirshberger now appeals, asserting that the Commission erred: (1) in determining that she willfully and intentionally harmed herself; (2) in using the wrong burden of proof and not making specific findings rebutting Arkansas Code Annotated section 11-9-707(3)'s presumption that the injury was not occasioned by the injured employee's willful intention to bring about her own injury; and (3) in determining that she was not performing employment services at the time of her injury.

We affirm the Commission's denial of benefits.

When reviewing a decision of the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the findings of the Commission and affirm if the decision is supported by substantial evidence, which is evidence that a reasonable mind might accept as adequate to support the Commission's conclusion. *Flores v. Walmart Distribution*, 2012 Ark. App. 201. The Commission's decision is not reversed unless the appellate court is convinced that fair-minded persons could not have reached the same conclusion with the same facts before them. *Id.* The injured party bears the burden of proof in establishing entitlement to benefits under the Workers' Compensation Act and must sustain that burden by a preponderance of the evidence. *Clardy v. Medi-Homes LTC Serv. LLC*, 75 Ark. App. 156, 55 S.W.3d 791 (2001). Where a claim is denied because the claimant has failed to show an entitlement to compensation by a preponderance of the evidence, the substantial-evidence standard of review requires the reviewing court to affirm the Commission if its opinion displays a substantial basis for the denial of relief. *Dearman v. Deltic Timber Corp.*, 2010 Ark. App. 87, 377 S.W.3d 301. Questions regarding the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. *Flores, supra.*

Kirshberger was Frost Oil's longtime bulk-plant manager. On May 29, 2012, a Frost Oil customer, Ann Greenhill, who was also Kirshberger's personal friend, came to the plant to make a purchase. According to both women, Greenhill made her purchase within the first ten minutes, and the two of them then spent more than an hour talking about personal

matters. Though Kirshberger contends that she walked out onto the bulk-plant loading dock to tell Greenhill goodbye and thank her for her business (which in her estimation promoted good customer relations), a videotape shows the two women earlier hugging and kissing goodbye in the bulk-plant office. A second video shows Kirshberger jumping off the loading dock while Greenhill was leaving; she was injured, breaking her leg in three places. The Commission found she intentionally jumped off the loading dock.

An injury is not compensable if it occurred at a time when employment services were not being performed. Ark. Code Ann. § 11-9-102(4)(B)(iii) (Repl. 2012). The Commission's fifty-one-page majority opinion sets forth in detail the circumstances surrounding the injury and adequately explains its reasons for denying Kirshberger benefits. We therefore affirm pursuant to *In re Memorandum Opinions*, 16 Ark. App. 301, 700 S.W.2d 63 (1985), as this case fits under subsection (a)—where the only substantial question involved is the sufficiency of the evidence—and subsection (b)—where the opinion, or findings of fact and conclusions of law, of the trial court or agency adequately explain the decision. As we affirm on the basis that Kirshberger was not performing employment services at the time of her injury, it is unnecessary to address her remaining two points on appeal.

Affirmed.

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

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

Mayton, Newkirk & Jones, by: *L. Eric Newkirk*, for appellees.