

## ARKANSAS COURT OF APPEALS

DIVISION I

No. CA 10-546

EVLYNENE KIRKENDOLPH  
APPELLANT

V.

DEPARTMENT OF FINANCE AND  
ADMINISTRATION and PUBLIC  
EMPLOYER CLAIMS DIVISION  
APPELLEES

**Opinion Delivered November 17, 2010**

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION  
[NO. F503749]

AFFIRMED

---

**WAYMOND M. BROWN, Judge**

Evlynene Kirkendolph suffered bilateral carpal-tunnel syndrome while working for the Office of Child Support Enforcement, and the Public Employer Claims Division accepted the injury as compensable. Kirkendolph claimed that she was permanently and totally disabled as a result of her injury, but the Workers' Compensation Commission disagreed. We affirm the Commission's decision.

Kirkendolph had worked for the Office of Child Support Enforcement for twenty-seven years. Before that, she received her bachelor's degree from the University of Arkansas at Pine Bluff. Her job required daily use of a computer. She started having pains in her hands in 1999, and she sought treatment at a family clinic. She returned to work after being prescribed medication. She returned to the doctor in February 2005 with pain in her hands. A nerve conduction study showed that she had bilateral carpal-tunnel syndrome. Kirkendolph submitted

to two carpal-tunnel release surgeries in February and March 2005. She was released to work, but the pain in her hands worsened. Kirkendolph wanted to return to work, but she could not touch keys on a keyboard without feeling pain.

In May 2005, she presented to Dr. Kenneth Johnston for a second opinion, and Dr. Johnston referred her to Dr. Lon Burba. On May 25, 2005, Dr. Burba remarked that Kirkendolph's diabetes might have been complicating her recovery. Dr. Johnston wrote that Kirkendolph was unable to perform her work duties and that she was coasting with light duty at that time. On June 2, 2005, Dr. Burba prescribed a wrist immobilizer and recommended that Kirkendolph not flex or extend her wrist, work on a keyboard, or do any sorting. In June 2005, she signed her resignation, citing an inability to do her job because of her medical condition, though she testified that she was forced to resign. She testified that, after she ran out of time under the Family and Medical Leave Act, she was told that she had to return to work or lose her job.

Kirkendolph presented to Dr. John Wilson on August 18, 2005. He assessed Kirkendolph with a fifteen-percent permanent impairment rating to the hands. The following October, she submitted to a vocational exam, but the examiner opined that she was not a viable candidate for rehabilitation at that time. According to the examiner, Kirkendolph had eleven more years before the normal retirement age and that, based on her education and work history, she had transferrable skills. But the examiner also wrote, "If Ms. Kirkendolph were to return to the workforce, she would be limited to sedentary work (which she was performing before her

injury), but severe bilateral hand limitations would preclude the great majority of all jobs in her local economy.”

Kirkendolph presented to Dr. Randy Bindra in November 2005. By this time, she was reporting difficulty sleeping because of the pain. Dr. Bindra could not make a confident diagnosis because he did not have any of her previous documentation, but he did state that she might not have experienced complete relief due to her underlying diabetic neuropathy. He did not think that she was malingering, but he thought that there might be psychosomatic issues at play. Kirkendolph followed up with Dr. Bindra in June 2006, but believing he could do nothing more, he released her from his care and scheduled a functional capacity evaluation (FCE). She gave less than maximum effort during the FCE, but the test showed that she could do at least sedentary work. The evaluator also wrote that, after the test, Kirkendolph was able to get into her car using her left hand without any assistance or difficulty.

In July 2007, both Dr. Burba and Dr. Johnston wrote that Kirkendolph was completely disabled. Dr. Burba diagnosed her with bilateral carpal-tunnel syndrome, intractable pain, reports of polyneuropathy, and mild cognitive impairment. Dr. Johnston wrote that she had bilateral hand neuropathy secondary to carpal-tunnel syndrome, with diabetes possibly a contributing factor. In addition to her diabetes and carpal-tunnel syndrome, Kirkendolph had a heart condition, though she believed that the heart condition did not keep her from working.

At the hearing before the ALJ, Kirkendolph contended that she was permanently and totally disabled. She stated that she could not use a computer efficiently. She also claimed that

she was unable to bathe herself. She stated that she is unable to drive long distances because her medication makes her drowsy. But she could cook, drive limited distances, use a television remote, use a telephone, and write. She also noted that she receives social security disability. Kirkendolph also presented testimony from her sister, who stated that Kirkendolph had difficulty dressing herself and holding a glass of water.

The ALJ determined that Kirkendolph was not permanently and totally disabled. While she acknowledged that Kirkendolph was impaired, the ALJ found that her capabilities exceeded her disabilities. The ALJ mainly relied on evidence showing that Kirkendolph could work in a sedentary capacity; that she could read, write, drive as needed, and perform limited household chores; and that she had made no efforts to find work. While the ALJ acknowledged the 2007 opinions of Drs. Johnston and Burba, both stating that Kirkendolph was unable to work, she also noted Dr. Burba's opinion that Kirkendolph suffered from polyneuropathy, mild cognitive impairment, and left ventricular hypertrophy, all of which were subsequent to her diagnosis of bilateral carpal-tunnel syndrome. The Commission eventually affirmed and adopted the ALJ's opinion.<sup>1</sup>

The only question here is whether substantial evidence supports the finding that Kirkendolph is not permanently and totally disabled. Kirkendolph relies on the vocational evaluation, which stated that there were no jobs available in her area that she could do; the

---

<sup>1</sup> The Commission originally dismissed Kirkendolph's appeal from the ALJ's opinion as untimely. But we reversed the dismissal after finding no evidence in the record to show that she had received a copy of the ALJ's opinion. *See Kirkendolph v. DF&A Revenue Servs. Div.*, 2009 Ark. App. 629.

opinions of Drs. Johnston and Burba, both of whom believe she is totally disabled; and the finding by social security that she is disabled to support her argument that she is permanently and totally disabled.

In reviewing decisions from the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's decision and affirm if that decision is supported by substantial evidence.<sup>2</sup> The Commission has the duty of weighing medical evidence, and the resolution of conflicting evidence is a question of fact for the Commission.<sup>3</sup> The interpretation of medical opinion is also for the Commission, and its interpretation has the weight and force of a jury verdict.<sup>4</sup> But the Commission may not arbitrarily disregard medical evidence or the testimony of any witness.<sup>5</sup> When the Commission denies compensation, it is required to make findings sufficient to justify that denial.<sup>6</sup> The substantial-evidence standard of review requires us to affirm if the Commission's decision displays a substantial basis for the denial of relief.<sup>7</sup>

“Permanent total disability” means inability, because of compensable injury or

---

<sup>2</sup> *Smith v. City of Ft. Smith*, 84 Ark. App. 430, 143 S.W.3d 593 (2004).

<sup>3</sup> *Stone v. Dollar Gen. Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005).

<sup>4</sup> *Oak Grove Lumber Co. v. Highfill*, 62 Ark. App. 42, 968 S.W.2d 637 (1998).

<sup>5</sup> *Hill v. Baptist Med. Ctr.*, 74 Ark. App. 250, 48 S.W.3d 544 (2001).

<sup>6</sup> *Lowe v. Car Care Marketing*, 53 Ark. App. 100, 919 S.W.2d 520 (1996).

<sup>7</sup> *Neal v. Sparks Reg'l Med. Ctr.*, 104 Ark. App. 97, 289 S.W.3d 163 (2008).

occupational disease, to earn any meaningful wages in the same or other employment.<sup>8</sup> Kirkendolph had the burden of proving that she was unable to earn meaningful wages.<sup>9</sup> Attendant factors relevant to whether a claimant is unable to earn any meaningful wages include medical evidence, age, education, experience and other circumstances reasonably related to a claimant's earning power.<sup>10</sup> Absent a finding of permanent total disability, a claimant who has suffered a scheduled injury is limited to the benefits listed at Arkansas Code Annotated section 11-9-521 (Repl. 2002).<sup>11</sup>

With these standards in mind, we hold that the Commission's opinion displays a substantial basis for the denial of relief. In denying benefits for permanent total disability, the Commission relied on the FCE (which showed that Kirkendolph could do sedentary work) and her education. Her testimony also establishes that she can read, write, drive as needed, and perform limited household chores. The Commission also noted medical records showing a number of conditions unrelated to her carpal-tunnel syndrome.<sup>12</sup> It relied on these medical records when it rejected Drs. Johnston's and Burba's findings of permanent and total disability.

---

<sup>8</sup> Ark. Code Ann. § 11-9-519(e)(1) (Repl. 2002).

<sup>9</sup> See Ark. Code Ann. § 11-9-519(e)(2).

<sup>10</sup> *Rutherford v. Mid-Delta Community Servs., Inc.*, 102 Ark. App. 317, 285 S.W.3d 248 (2008).

<sup>11</sup> Ark. Code Ann. § 11-9-521(g) (Repl. 2002).

<sup>12</sup> Cf. *Pyle v. Woodfield, Inc.*, 2009 Ark. App. 251, 306 S.W.3d 455 (rejecting a claim of temporary-total disability, even when the employee's treating physician took the employee off work, in light of evidence showing that the employee suffered from a number of conditions unrelated to his compensable injury).

Kirkendolph's compares her case to *Hollifield v. Bird & Son, Inc.*,<sup>13</sup> but that case is not applicable here. There, the supreme court held that substantial evidence did not support the Commission's finding regarding the end of the employee's temporary-total disability. But the question there had nothing to do with whether the claimant was totally disabled, so that opinion is of no consequence here.

Kirkendolph relies upon evidence showing that she would be unable to find a job in the local economy that fits within her restrictions. The evidence does reveal such a difficulty, but being in a market where jobs are scarce does not render a worker disabled for the purposes of workers' compensation. She also relies on the fact that she has been declared eligible for social security disability. But the simple answer is that permanent and total disability for the purposes of social security is different that permanent and total disability under our workers' compensation law.<sup>14</sup>

There may be evidence to support a finding of permanent and total disability. But the question before this court is whether substantial evidence supports a finding to the contrary. It does; therefore, we must affirm.

HART and BAKER, JJ., agree.

---

<sup>13</sup> 227 Ark. 703, 301 S.W.2d 27 (1957).

<sup>14</sup> *See also Martin v. Jensen Constr. Co.*, 2010 Ark. App. 294, 374 S.W.3d 774 (affirming the denial of permanent and total disability benefits despite the employee's testimony that he had been determined to be permanently and totally disabled for the purposes of social security).