

Cite as 2010 Ark. App. 797

**ARKANSAS COURT OF APPEALS**

DIVISION IV

No. CA10-555

TRACY MORGAN

APPELLANT

V.

HIGHLAND WINDOW and CHARTIS  
INSURANCE

APPELLEES

**Opinion Delivered** DECEMBER 1, 2010APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION  
[F902094]

AFFIRMED

**RITA W. GRUBER, Judge**

Tracy Morgan appeals the decision of the Workers' Compensation Commission finding that he failed to prove that he sustained a compensable injury to his left elbow. We affirm the Commission's decision.

In reviewing decisions from the Commission, we view the evidence in the light most favorable to the Commission's decision and affirm the decision if it is supported by substantial evidence. *Holland Group, Inc. v. Hughes*, 95 Ark. App. 369, 371, 237 S.W.3d 120, 122 (2006). Substantial evidence exists if reasonable minds could reach the Commission's conclusion. *Id.* The issue is not whether we might have reached a different result from the Commission; if reasonable minds could reach the result found by the Commission, we must affirm the decision. *Id.* Where the Commission denies a claim because of the claimant's failure to meet his burden of proof, as here, the substantial evidence standard of review requires that we

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affirm the Commission's decision if its opinion displays a substantial basis for the denial of relief. 95 Ark. App. at 371, 237 S.W.3d at 122-23. The Commission is not required to believe any witness, and it may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. 95 Ark. App. at 371, 237 S.W.3d at 123. The Commission may accept or reject medical opinions and determine their medical soundness and probative force. *Id.*

On December 2, 2008, Mr. Morgan, an employee of Highland Window, was lifting windows into the back of a truck when the edge of a window hit the tailgate of the truck, injuring Mr. Morgan's left shoulder and arm. The next day, Mr. Morgan told his supervisor, Brent Watts, that he had injured his shoulder, but he did not mention an elbow injury. Highland admitted compensability of the shoulder injury, and Mr. Morgan was treated at Midway Medical Clinic on December 3, 2008. The treatment notes reflect that Mr. Morgan complained of left shoulder pain and shoulder popping; the notes do not indicate that he mentioned elbow pain. The notes from the left-arm exam stated the following: "guarded ROM due to shoulder pain; tenderness to palpation of the anterior shoulder just medial to the humerus, no tenderness of AC joint; no tenderness below the acromion brachial and radial pulses +2 intact; tenderness to palpation of the posterior elbow."

On January 8, 2009, Mr. Morgan signed a Form AR-N, Employee's Notice of Injury, on which he said that he had injured his shoulder on December 2, 2008. He did not mention his elbow. On February 9, 2009, Dr. W.C. Grammar of Medical Park Orthopaedic Clinic

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saw Mr. Morgan and noted that he suffered from an injury to the left shoulder. Dr. Grammar wrote in his report that Mr. Morgan “denies any additional injuries.” In the report of his examination of Mr. Morgan’s left elbow, Dr. Grammar noted “Range of Motion: full and painless in all planes, no crepitation.” Dr. Grammar diagnosed Mr. Morgan with a rotator-cuff tear in his left shoulder and performed surgery on February 25, 2009.

The first documented notation indicating that Mr. Morgan suffered from left elbow pain was on February 27, 2009, where Mr. Morgan’s physical therapist noted in Mr. Morgan’s initial evaluation that he complained of left elbow pain. Dr. Grammar then saw Mr. Morgan on March 19, 2009, and noted that Mr. Morgan reported that his elbow “was fine until the accident.” He told Dr. Grammar that since the accident he had “pain on the tip of his elbow and has limited ROM that is worsening.” Dr. Grammar’s examination of Mr. Morgan’s left elbow indicated “moderate localized tenderness over the olecranon/proximal ulna radial head triceps insertion, no swelling, no joint effusion present, no deformities noted, test for epicondylitis negative” and the range of motion test showed “mild diffuse crepitation present-noted during flexion and extension, ankylosis present.” The assessment from a radiology report on the same day was severe osteoarthritis of the elbow.

At the hearing, Mr. Morgan testified that he had experienced “pain and problems” with his left elbow before the December 2nd accident that he thought was tennis elbow, but he said it never stopped him from working and it went away. He said he did not notice any bruising or swelling in his elbow after the accident. He said he did have pain in his elbow

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after the accident but testified that it was not nearly as painful as his shoulder. He testified that his elbow got worse after his rotator-cuff surgery. He also testified that his left elbow was painful and that he could not straighten it. Finally, he testified that before the accident, his elbow was fine.

Mr. Morgan's supervisor, Brent Watts, also testified. He admitted that Mr. Morgan was a very good worker and never complained about anything. Mr. Watts also said that Mr. Morgan did not complain to him about his left elbow until sometime after his surgery.

A compensable injury is an "accidental injury causing internal or external physical harm to the body . . . arising out of and in the course of employment and which requires medical services or results in disability or death." Ark. Code Ann. § 11-9-102(4)(A)(i) (Supp. 2009). An injury is accidental if it is "caused by a specific incident and is identifiable by time and place of occurrence[.]" *Id.* A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(D). Objective findings are those findings that cannot come under the voluntary control of the patient. Ark. Code Ann. § 11-9-102(16).

The Commission found that the evidence did not demonstrate that Mr. Morgan injured his left elbow on December 2, 2008. The Commission recognized that Mr. Morgan complained of left shoulder pain, not left elbow pain, when he was treated on December 3, 2008, and did not mention an elbow injury, but only a shoulder injury, on his Form AR-N on January 8, 2009. The Commission also noted that Dr. Grammar's report from February

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9, 2009, mentioned only a shoulder injury and actually stated that his examination of Mr. Morgan's left elbow showed full and painless range of motion with no crepitation. While Mr. Morgan testified that his elbow was fine before the accident and was not after the accident, determining the credibility and weight to be given a witness's testimony is a question within the sole province of the Commission. *Smith v. City of Fort Smith*, 84 Ark. App. 430, 435, 143 S.W.3d 593, 597 (2004). The Commission found that Mr. Morgan did not prove that he sustained an elbow injury arising out of and in the course of employment or establish a compensable injury to his left elbow by medical evidence supported by objective findings. The Commission found that reports of crepitation and osteoarthritis in March 2009 did not prove the existence or extent of an alleged left elbow injury occurring on December 2, 2008.

Mr. Morgan contends on appeal that the Commission erred in failing to find his elbow injury compensable. He argues that the Commission erred by failing to consider his testimony or credibility. The Commission considered Mr. Morgan's testimony but found that the evidence, including notes from treatment, the Form AR-N, and Mr. Morgan's statements and actions after the accident, did not support the claim. If reasonable minds could reach the result found by the Commission, we must affirm its decision. We hold that the Commission's decision displays a substantial basis for the denial of relief. Because we uphold the Commission's decision that Mr. Morgan did not prove that he sustained a compensable injury to his left elbow, we do not address his argument that the Commission failed to address what treatment was "reasonably necessary in connection" with the injury pursuant

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to Ark. Code Ann. § 11-9-508.

Affirmed.

PITTMAN and GLOVER, JJ., agree.