Cite as 2011 Ark. App. 129

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA10-879

BILL MONTGOMERY APPELLANT	**Opinion Delivered** FEBRUARY 16, 2011
V.	APPEAL FROM THE ARKANSAS WORKERS' COMPENSATION COMMISSION [NO. F902882]
J & J LUMBER COMPANY and BITUMINOUS CASUALTY, CARRIER APPELLEES	AFFIRMED

RAYMOND R. ABRAMSON, Judge

Bill Montgomery filed this workers' compensation claim against his employer, J & J Lumber Company, alleging that he injured his right knee at work. The parties appeared before the Administrative Law Judge; the issues to be litigated were compensability, medical benefits, temporary total disability benefits, permanent impairment rating, and attorney's fees. The ALJ found that Montgomery failed to prove that his injury occurred in the course and scope of his employment with J & J Lumber, thereby denying Montgomery's claim in its entirety. Montgomery appealed to the Commission, which affirmed and adopted the ALJ's decision. Montgomery now appeals to this court. We, however, affirm.

On appeal, we view the facts in the light most favorable to the Commission's decision and affirm if its decision is supported by substantial evidence. *Owens Planting Co. v. Graham*,

102 Ark. App. 299, 302, 284 S.W.3d 537, 539 (2008). "Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion." *Id.* "[When] the Commission denies a claim because of the claimant's failure to meet his burden of proof, the substantial-evidence standard of review requires that we affirm the Commission's decision if its opinion displays a substantial basis for the denial of relief." *Martin Charcoal, Inc. v. Britt*, 102 Ark. App. 252, 255, 284 S.W.3d 91, 93 (2008). It is the Commission's duty, not ours, to make credibility determinations, to weigh the evidence, and to resolve conflicts in the medical testimony. *Id.*, 284 S.W.3d at 94. When the Commission, as it did here, affirms and adopts the ALJ's opinion, we consider both the ALJ's decision and the Commission's majority opinion. *Fayetteville School Dist. v. Kunzelman*, 93 Ark. App. 160, 162, 217 S.W.3d 149, 151 (2005).

For his knee injury to be compensable, Montgomery had to prove by a preponderance of the evidence (1) that he suffered an injury arising out of and in the course of his employment with J & J Lumber; (2) that the injury was caused by a specific incident identifiable by time and place of occurrence; (3) that the injury caused internal or external physical harm to his body, which required medical services or resulted in disability or death; and (4) that the injury was established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(4)(A)(i), (D), (E)(i) (Supp. 2009); *see also Steak House v. Weigel*, 101 Ark. App. 81, 85–86, 270 S.W.3d 365, 367–68 (2007). The Commission, by affirming

and adopting the ALJ's opinion, found that Montgomery failed to prove that his injury arose out of and in the course of his employment. Substantial evidence supports this conclusion.

Montgomery had been working for J & J Lumber as a security guard and "utility" for about a year when he allegedly injured his right knee at work in mid-September 2008. Part of Montgomery's job included shoveling, raking, and dumping hoppers of sawdust and bark. Montgomery testified that he was shoveling wet sawdust, turned to throw it in the hopper, and felt a sharp pain on the inside of his right knee. Montgomery said that he told his co-worker about the injury, but did not immediately report it to his supervisor because his supervisor was not on site at the time. According to Montgomery, he told his supervisor, Ronald Jenkins, about his injury the next day, but Jenkins did not suggest that he complete any workers' compensation paperwork or see a particular doctor. By later in the week, Montgomery was using crutches. He testified that he told the company owner that his knee was hurting badly, but did not report to him that his injury was work related.

Montgomery continued to work during this time and did not see a doctor until September 18, 2008, when he went to the Mercy Medical Express Care Clinic. He received a steroid and pain shot in his knee on his first visit and some pain medication on his second visit. Montgomery also began seeing Dr. Crenshaw at the Charitable Christian Medical Clinic, who took Montgomery off work and referred him to Dr. Wilson at UAMS. At UAMS, Montgomery underwent an MRI and ultimately had surgery on his right knee to

repair torn cartilage. After a recovery and therapy period, Montgomery was released in June 2009, with a 15% permanent-impairment rating.

Montgomery testified that he has a history of gout in his right toe, ankle, and calf. Neither of the two reports from the Mercy Medical Express Care Clinic mentions a work injury. Instead they both attribute Montgomery's knee problems to gout. Similarly, the first report from the Charitable Christian Medical Clinic states, "no known injury" and "no trauma." Indeed, none of the notes from Montgomery's appointments at the Charitable Christian Medical Clinic tie his knee problems to a work-related incident.

The first written record tying Montgomery's knee problems to a work injury is the orthopaedic history form Montgomery filled out at UAMS on March 13, 2009. Dr. Wilson wrote, in a note dated the same day, "[o]n the surface from what I am told this appears to be a work related injury due to the fact that he did not have symptoms or complaints prior to his injury. He injured himself and reported the injury and has had pain in his right knee since."

Ronald Jenkins, the J & J Lumber Mill Manager and Montgomery's supervisor, testified that when he noticed Montgomery had not come in for work, he asked about him and found out that Montgomery had gone to the doctor. Jenkins said that Montgomery told him (at some point either before or after the alleged work injury) that he had gout in his knee and had hurt his knee playing football when he was younger. Jenkins said that Montgomery never told him that he injured his knee at work.

Karen Funderburk, secretary/safety manager at J & J Lumber, testified that Montgomery called in around the time of his alleged work injury to tell her that he could not come to work because he was having knee problems. Funderburk said that she asked Montgomery twice whether he had hurt his knee at work and that both times he responded no. Funderburk said that Montgomery told her that his knee problems were recurring and that he had gout.

Wes Johns, owner of J & J Lumber, testified that Montgomery never reported a work-related injury to him either. He said that he had a conversation with Montgomery about his knee problems, but that Montgomery attributed them to gout. He testified that it was several months later when he first heard that Montgomery was claiming that he injured his knee at work.

The ALJ specifically found Jenkins, Funderburk, and Johns to be more credible than Montgomery. It also pointed to the contemporaneous medical reports—none of which mention a work related injury as the source of Montgomery's knee problems. The paperwork Montgomery filled out at UAMS several months later was the first mention of his knee problems being work-related. And, as the ALJ pointed out, Dr. Wilson obviously relied on Montgomery's self-reported history. In short, substantial evidence supports the ALJ's conclusion that Montgomery failed to prove by a preponderance of the evidence that his knee injury occurred in the course and scope of his employment with J & J Lumber.

Montgomery also makes a notice/reporting argument under Arkansas Code Annotated section 11-9-701 (Repl. 2002). But the ALJ did not bar Montgomery's claim or find his claim not to be compensable based on Montgomery's failure to follow any reporting/notice requirements. Instead, the ALJ denied Montgomery's claim because he failed to prove that his injury occurred in the course and scope of his employment—one of the core elements of a compensable claim. As discussed above, substantial evidence supports the ALJ's decision on that point. Finding Montgomery's section 11-9-701 argument unpersuasive, we affirm.

Affirmed.

GLOVER and HOOFMAN, JJ., agree.