

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA10-757

JANICE L. ALFIERI

APPELLANT

V.

WAL-MART ASSOCIATES, INC., and
CLAIMS MANAGEMENT, INC.

APPELLEES

Opinion Delivered FEBRUARY 23, 2011

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F501583]

REVERSED AND REMANDED

ROBIN F. WYNNE, Judge

Janice Alfieri appeals from a decision of the Arkansas Workers' Compensation Commission denying her request for benefits for an alleged back injury. On appeal, appellant argues 1) that the Commission erred by finding that she failed to prove that she sustained a compensable injury and 2) that the Commission erred by failing to find that she sustained a compensable aggravation of a pre-existing back injury. Because the Commission did not make a finding with regard to appellant's argument that she sustained a compensable aggravation of a pre-existing injury, we reverse the decision of the Commission and remand the case for additional findings of fact.

On February 5, 2005, appellant was working as a stocker for Wal-Mart. Appellant was placing a box of umbrella strollers into a shopping cart when she "felt something in [her] back that hurt really bad." After resting for a while, appellant resumed work but did not lift any heavy objects. Appellant worked for a while, then began to experience pain in her leg that

went down to her foot. Appellant then had one of the employees take her to the emergency room. After being treated at the emergency room, appellant saw the company doctor, Dr. Burnett, who returned her to work. Appellant continued to experience problems with her back and received additional treatment. Appellant underwent a fusion surgery on her lower back that was performed by Dr. Briggs. Appellant testified that, following the surgery, she was still experiencing problems with her back, but they were not as bad as before. Appellant was off work from April 27, 2005, until February 1, 2006. Appellant returned to work for Wal-Mart but later left that employment to care for a friend who was being treated for cancer. Appellant testified that, after she quit working for Wal-Mart, she noticed that not working did not bother her back, and she did not want to return to work because she could not handle it. Appellant filed a claim for benefits, which was denied by appellees.

At the hearing on her claim, appellant denied having any low-back problems prior to February 5, 2005. She testified that she had a prior workers' compensation claim with a different employer for a neck injury. Appellant stated that she had been seeing a chiropractor since 1992. According to appellant, she saw the chiropractor for her neck problems. Appellant admitted that she probably mentioned to her chiropractor that she experienced low-back soreness on September 13, 2004, although she testified that any back problems she had prior to February 5, 2005, were "temporary, come and go kind of problems." Appellant further admitted that she probably told her physical therapist on March 29, 2005, that her back pain began three to four months previously and that she could relate no specific mechanism or injury. On redirect, appellant testified that when she told her physical therapist on March 29,

2005, that her pain began three to four months prior, she actually meant two months prior.

Vernita Manship testified before the Commission that she had known appellant for approximately ten to twelve years, that appellant lived with Manship three to four years before the hearing date, and that she would see appellant two to four times per year in social settings before February 5, 2005. Manship stated that she never noticed appellant having any problems with her back before February 5, 2005. According to Manship, appellant never told her that her back problems began while she was working at Wal-Mart.

Morris Cox testified that he had known appellant for more than five years but less than ten years. Appellant had been living with Cox since he was diagnosed with cancer about three years before. Cox testified that he did not observe severe problems with appellant prior to her injury. Cox stated that appellant could do what she wanted to before her injury, but there was “a lot” she could not do since the injury.

On October 16, 2009, the administrative law judge (ALJ) filed an opinion denying appellant’s claim for benefits on the basis that appellant failed to prove that she sustained a compensable injury. The ALJ found that appellant’s testimony at the hearing was not credible and that appellant’s back problems pre-existed her alleged 2005 injury. Appellant appealed to the Commission, and, in a decision filed on May 18, 2010, the Commission affirmed and adopted the decision of the ALJ. Appellant has now appealed to this court.

In reviewing a decision of the Workers’ Compensation Commission, this court views the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission’s findings and affirms those findings if they are supported by substantial

evidence, which is evidence a reasonable person might accept as adequate to support a conclusion. *Parker v. Comcast Cable Corp.*, 100 Ark. App. 400, 269 S.W.3d 391 (2007). This court will not reverse the Commission's decision unless it is convinced that fair-minded people with the same facts before them could not have reached the same conclusions reached by the Commission. *Smith v. County Market/Southeast Foods*, 73 Ark. App. 333, 44 S.W.3d 737 (2001).

In her appeal to the Commission from the decision of the ALJ, appellant put forth an alternative argument that if her back injury existed prior to her alleged 2005 injury, then the 2005 incident constituted a compensable aggravation of the pre-existing injury. In affirming and adopting the decision of the ALJ, the Commission failed to make any findings of fact regarding whether appellant sustained a compensable aggravation. Therefore, we reverse the decision of the Commission and remand for the Commission to make additional findings of fact regarding the alleged aggravation. See *Wright v. American Transportation*, 18 Ark. App. 18, 709 S.W.2d 107 (1986).

Reversed and remanded.

HART and BROWN, JJ., agree.