

ARKANSAS COURT OF APPEALS

DIVISION IV

No. CA10-1225

JENNIFER C. VANGILDER
APPELLANT

V.

ANCHOR PACKAGING, INC., and
CANNON COCHRAN CLAIM
MANAGEMENT SERVICES, INC.,
APPELLEES

Opinion Delivered MARCH 30, 2011

APPEAL FROM ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[F901334]

AFFIRMED

RITA W. GRUBER, Judge

Jennifer C. Vangilder brings this appeal from the determination of the Workers' Compensation Commission regarding her anatomical rating for a compensable cervical injury. The decision of the Commission affirmed and adopted the administrative law judge's decision. Vangilder contends that the Commission's opinion displays no substantial basis for assigning a rating lower than the one assigned by her neurosurgeon. We disagree and affirm.

Vangilder's compensable injury occurred on February 2, 2009, while she was boxing rolls of plastic in her assembly line work at Anchor Packaging's plant in Marmaduke. The injury resulted in a two-level cervical discectomy with fusion, performed by neurosurgeon Dr. Robert E. Abraham on May 13, 2009. Anchor Packaging controverted her initial workers' compensation claim that the injury was compensable and that she was entitled to

related benefits. The administrative law judge conducted a hearing and decided the issues in her favor; Anchor Packaging did not appeal that decision.

On May 7, 2010, the administrative law judge conducted a second hearing to determine Vangilder's claim for additional medical benefits and the amount of permanent physical impairment. Vangilder contended that she was entitled to a nineteen-percent rating given by Dr. Abraham. Anchor Packaging contended that the appropriate rating was eleven percent under the *American Medical Association's Guides to the Evaluation of Permanent Impairment*, 4th Edition. Evidence at the hearing included Vangilder's medical records, testimony by Vangilder and her father-in-law, and a copy of Table 75 of the AMA Guides, submitted by Anchor Packaging.

The medical records of Dr. Abraham show that on May 13, 2009, he performed a two-level fusion at C5–6 and 6–7 with allograft bone and plates. His postoperative notes state that surgery was indicated by increased pain; decreased range of cervical motion, with muscle spasms and tenderness; decreased motor functions in the left arm and hand; and a cervical myelogram showing a large HNP at C5–6 with root and cord impingement and a large central HNP at C6–7. His impairment report of July 21, 2009, reveals a diagnosis of cervical radiculopathy, treatment in the form of anterior cervical disc fusion at C5–6 and C6–7, an impairment rating of nineteen percent, and a release to work on July 15, 2009. The report includes Dr. Abraham's handwritten note, "Ratings include limited mobility and neurologic dysfunction." He explained in a follow-up letter that he had considered the AMA Guides, along with his objective and subjective findings, to arrive at the nineteen-percent rating.

The Commission's decision included the following discussion of impairment:

Ark. Code Ann. § 11-9-704 (c)(1)(B) (Repl. 2002), provides:

Any determination of the existence or extent of physical impairment shall be supported by objective and measurable physical or mental findings.

Objective findings are those which cannot come under the voluntary control of the patient, and specifically excludes pain, straight-leg-raising test and range-of-motion tests. Ark. Code Ann. § 11-9-102 (16)(A) (Repl. 2002). Arkansas Workers' Compensation Commission Rule 099.34, Impairment Rating Guide General Provisions, mandates the use of the *Guides to the Evaluation of Permanent Impairment* (4th ed. 1993) in the assessment of anatomical impairment.

Permanent impairment is any permanent functional or anatomical loss remaining after the healing period has been reached. *Johnson v. General Dynamics*, 46 Ark. App. 188, 878 S.W.2d 411 (1994). The injured employee is entitled to the payment of compensation for the permanent functional or anatomical loss of use of the body as a whole whether his earning capacity is diminished or not. *Id.*

Page 3/113 table 75 of the *AMA Guides*, 4th ed., reflects that a single level spinal fusion with residual signs or symptoms warrants a 10% impairment to the whole person and that each additional level increases the rating by 1%.

Noting that Vangilder had undergone a two-level anterior cervical fusion, the Commission concluded that a preponderance of the evidence proved an anatomical impairment of eleven percent to the body as a whole. The Commission ordered Anchor Packaging to pay weekly permanent disability corresponding to this rating, and to pay all reasonably necessary medical expenses related to treatment of the compensable injury.

Vangilder complains that the Commission based its determination of impairment rating solely on Table 75 of the Guides and failed to take into account Dr. Abraham's statement that his rating included limited mobility and neurologic dysfunction. She also argues that Table

75's directives on two-level cervical fusion allow consideration of any impairment due to neurologic deficits, such as radiculopathy or nerve injury, as a part of whole-person impairment.

The Commission may not arbitrarily disregard a physician's opinion, especially when it is based on objective and measurable findings, but it is within the province of the Commission to reconcile conflicting medical evidence. *Vite v. Vite*, 2010 Ark. App. 565, 377 S.W.3d 453; *Foxx v. American Transp.*, 54 Ark. App. 115, 924 S.W.2d 814 (1996). When the Commission denies benefits because the claimant has failed to meet his burden of proof, the substantial-evidence standard of review requires that we affirm if the Commission's decision displays a substantial basis for the denial of relief. *Frances v. Gaylord Container Corp.*, 341 Ark. 527, 20 S.W.3d 280 (2000).

Here, the Commission's decision displays a substantial basis for rejecting Vangilder's claim for a nineteen-percent rating. The Commission acknowledged Dr. Abraham's nineteen-percent rating and his notation of neurological changes, but it chose the eleven-percent impairment anatomical rating supported by Table 75 of the Guides. Vangilder does not show that her argument regarding application of the directives was raised to the Commission, and we therefore will not address it on appeal. *Couch v. First State Bank of Newport*, 49 Ark. App. 102, 898 S.W.2d 57 (1995).

Affirmed.

VAUGHT, C.J., and BROWN, J., agree.