

ARKANSAS COURT OF APPEALS

DIVISION IV
No. CA08-1066

RICHARD E. BROOKS

APPELLANT

V.

R.A. BROOKS TRUCKING CO.,
and RETENTION MANAGEMENT
SERVICES

APPELLEES

Opinion Delivered April 1, 2009

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F704113]

AFFIRMED

M. MICHAEL KINARD, Judge

Appellant, Richard E. Brooks, appeals from a denial of benefits by the Workers' Compensation Commission for an injury to his left leg. We affirm.

Appellant is a truck driver for the employer, a company owned by his father. Appellant testified before the Commission that on or about April 12, 2007, he was in Washington State picking up a load of apples when he felt a sting or bite on his left leg behind the knee. Appellant never saw a spider or bug or found one in his truck. Appellant did not notice any immediate problems other than redness around the site of the sting or bite. However, over the next few days, while he and his wife were returning with their load to Arkansas, his leg began to swell. The swelling reached the point where appellant was unable to walk on the leg.

On April 18, 2007, appellant went to the emergency room where he was given antibiotics and a pain pill and told to return home. On April 20, 2007, appellee returned to the emergency room, complaining that he could not walk, and that there were “black bubbles on his leg” that were releasing “black stuff.” Neither the report from April 18, 2007, nor the report from April 20, 2007, mention any cause of appellant’s injury. Contemporaneous with the injury to appellant’s leg was an abscess on his right elbow, which he never alleged to be work-related. Appellant was diagnosed with necrotizing fasciitis in his left leg and underwent emergency surgery. Appellant returned to work on June 1, 2007. As of the hearing date, appellant was working full-time with no restrictions. Appellant testified at the hearing before the Commission that he did not have health insurance at the time of the injury.

Appellant sought medical and temporary-total disability benefits from appellees. Appellees denied the claim, contending that appellant’s injury either did not occur at work or did not arise in the course and scope of his employment. The Administrative Law Judge (ALJ) denied benefits, finding that appellant failed to prove a compensable injury. The Commission affirmed and adopted the decision of the ALJ. This appeal followed.

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 a case such as this one, where the Commission denies benefits because a claimant failed to meet his or her burden of proof, we affirm if the Commission's decision displays a substantial basis for the denial of relief. *Crudup v. Regal Ware, Inc.*, 341 Ark. 804, 20 S.W.3d 900 (2000).

The opinion of the ALJ, which was affirmed and adopted by the Commission, turns largely on the determination of appellant's and his wife's credibility. Questions regarding the weight and credibility of the evidence are within the sole province of the Commission, which is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony it deems worthy of belief. *Strickland v. Primex Technologies*, 82 Ark. App. 570, 120 S.W.3d 166 (2003). Once the Commission has made its decision on issues of credibility, the appellate court is bound by that decision. *Logan County v. McDonald*, 90 Ark. App. 409, 206 S.W.3d 258 (2005).

In this case, the ALJ and the Commission found that appellant's testimony regarding the causation of the injury was not credible. The ALJ pointed out what she viewed as inconsistencies in appellant's and his wife's testimony. These inconsistencies centered mainly on some uncertainty on the part of appellant as to the exact date of the injury and

differing testimony between appellant and his wife as to how the injury was reported to the employer. The ALJ also questioned why appellant had an abscess on his leg that he argued was a compensable injury, while, at the same time, he had an abscess on his elbow that he never contended was compensable. We note that, while the ALJ never specifically stated that she found the testimony of appellant's wife not to be credible, Mrs. Brooks's testimony so closely paralleled that of appellant that addressing the credibility of appellant effectively addresses her credibility because the credibility determination was based on the content of the testimony and not personal observations of the appellant.

Appellant argues that the ALJ impermissibly disregarded the opinion of Dr. Shaw that appellant's injury was due to a spider or insect bite. However, none of the medical records indicate that appellant's physicians actually saw a spider or insect bite on appellant's leg. Dr. Shaw's opinion regarding causation of the injury was based on a history by appellant that the Commission found was inaccurate. The Commission may not disregard medical evidence solely because it is based on information from the claimant; however, the Commission may reject a doctor's opinion that is based on a history from the claimant that the Commission determines is not credible. *See Roberts v. Whirlpool*, 102 Ark. App. 284, ___ S.W.3d ___ (2008).

Apart from the testimony of appellant and his wife before the Commission and appellant's history of the injury to his physicians, there is not substantial evidence in the medical records to support a finding that the injury occurred as appellant described. As

mentioned above, none of appellant's treating physicians indicated that they actually saw a spider or insect bite, nor do the medical records include diagnostic evidence indicating that appellant received a spider or insect bite. While the testimonial evidence in this case could support a different conclusion than the one reached by the Commission, because the Commission determined that appellant's testimony regarding the causation of his injury was not credible, and we are bound by the Commission's decisions regarding the credibility of witnesses, we find that reasonable minds with the same facts before them could reach the conclusion reached by the Commission. Accordingly, we affirm the decision of the Commission.

Affirmed.

GLOVER and MARSHALL, JJ., agree.