

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA09-708

SEA ARK MARINE, INC., & AIG
CLAIM SERVICES

APPELLANTS

V.

JERRY PIPPINGER

APPELLEE

Opinion Delivered January 6, 2010

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION [F405234]

AFFIRMED

DAVID M. GLOVER, Judge

This is the second appeal of this workers' compensation case. The primary issue involves whether appellee, Jerry Pippinger, satisfied his burden of proving that additional medical treatment for his compensable injury was reasonable and necessary. In an earlier opinion, *Sea Ark Marine, Inc. v. Pippinger*, 2009 Ark. App. 223, 303 S.W.3d 102 (*Sea Ark I*), our court reversed and remanded to the Commission. Appellants challenge the Commission's decision on remand. We affirm the Commission's decision.

Appellee, age sixty-two, suffered his compensable injury on May 1, 2004, injuring his left foot and ankle. He was diagnosed with a comminuted and compressed fracture of the left calcaneus bone. Dr. John Lytle, an orthopedic surgeon, performed surgery on May 26, 2004, but appellee later developed reflex-sympathetic dystrophy (RSD)¹ of the

¹Now known more commonly as "complex regional pain syndrome."

left-lower extremity. Appellee's subsequent medical history related to this injury is set forth extensively in *Sea Ark I*, and, therefore, it is not necessary to repeat that history here.

Procedural Background

Prior to *Sea Ark I*, a hearing was held on November 16, 2007, before ALJ Elizabeth W. Hogan. Following that hearing, the ALJ found that appellee was a credible witness who had cooperated with his physicians and treatment; that he was entitled to continuing medical treatment with Dr. Ahmad; and, that, if Dr. Ahmad ultimately needed to implant a stimulator, that procedure would be a reasonable and necessary medical expense for appellee. She noted Dr. Ackerman's diagnosis of RSD, after diagnostic testing, and noted that there was no evidence presented that appellee was malingering. The ALJ also noted Dr. Ahmad's opinion that, although appellee's pain syndrome might wax and wane, it could not be cured. She determined that appellee would need follow-up pain management for the rest of his life. The ALJ also made a specific finding that, because Dr. Ahmad did not have all of appellee's medical records at the time of the initial evaluation, Dr. Ahmad needed to reevaluate appellee before proceeding; but she noted that a stimulator implant was the preferred course of treatment. She specifically found that the pain-management treatment was reasonable and necessary to address pain and to stop the syndrome from progressing. The Commission affirmed and adopted the ALJ's opinion. In reversing and remanding the case, we held "that the ALJ and Commission erred by ordering an additional evaluation and reserving a decision on the primary issue in the litigation."

On remand, the Commission delivered its modified opinion, which took out the following original paragraph 3:

3. According to Dr. Ahmad, this pain syndrome may wax and wane but it cannot be cured. The claimant will need follow-up pain management for the rest of his life. Since Dr. Ahmad did not have all of the claimant's medical records at the time of the evaluation, he needs to reevaluate the claimant before proceeding, but a stimulator implant is the preferred course of treatment. This pain management treatment is reasonable and necessary to address pain and to stop the syndrome from progressing.

The modified paragraph 3, following remand, provides:

3. Based on the evidence of record, including the records, opinions and recommendations documenting the claimant's condition from Drs. Lytle, Ackerman, Nguyen and Ahmad, the claimant has proved by a preponderance of the evidence that additional medical treatment from Dr. Ahmad is reasonably necessary, including the implantation of a dorsal column stimulator.

Standard of Review

In reviewing decisions from the Workers' Compensation Commission, this court views the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's decision and affirms if that decision is supported by substantial evidence. *United Farms, Inc. v. Gist*, 2009 Ark. App. 717, 374 S.W.3d 23.

Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.* The issue is not whether the reviewing court 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.*

- I. *The Commission failed to hold appellee to his statutory burden of proving entitlement to additional medical care by a preponderance of the credible evidence by opining that*

the implantation of a dorsal column stimulator was reasonable and necessary despite previously ruling that appellee needed to return to the doctor for further workup before that care could be deemed reasonable and necessary.

The gist of appellants' position under the first point of appeal is that the Commission, in its original opinion, conceded that additional medical proof would be necessary to support a finding that additional medical treatment was reasonable and necessary, and that, therefore, fair-minded persons could not reach the decision, following remand, that appellee had satisfied his burden of proving that the additional medical treatment was reasonable and necessary. We disagree.

Substantial evidence is that relevant evidence that a reasonable mind might accept as adequate to support a conclusion. In reversing and remanding the case, our court noted the ALJ's findings in part:

At issue was whether or not additional medical treatment is reasonable and necessary pursuant to Arkansas Code Annotated section 11-9-508 (Supp. 2007). In her opinion dated February 14, 2008, the ALJ noted that she found appellee to be a *credible witness* who has *cooperated with his physicians and treatment*. She found that he is *entitled to continuing medical treatment with Dr. Ahmad* and, if ultimately Dr. Ahmad needs to implant a stimulator, that would be a reasonable and necessary medical expense. She noted *Dr. Ackerman's diagnosis of "complex regional pain syndrome," formerly known as RSD, after diagnostic testing and noted that there was no evidence presented that appellee is malingering*. The ALJ also noted Dr. Ahmad's opinion that, although appellee's pain syndrome may *wax and wane, it cannot be cured*. She determined that appellee *will need follow-up pain management for the rest of his life*.

See Ark I, 2009 Ark. App. at 4-5, 303 S.W.3d at 104 (emphasis added). Our court also noted that "The record is replete with records, opinions, and recommendations documenting appellant's condition from Drs. Lytle, Ackerman, Nguyen, and Ahmad from

which the ALJ and the Commission were required to make their determinations,” and that

[t]he plain language of section 11-9-811 does not authorize the Commission to reserve making determinations on compensability and additional benefits when those were the only issues litigated by the parties. Based upon the evidence in the record before us, we hold that the record was sufficiently complete to allow a determination that would be fair and just to all parties concerned.

Id. at 9, 303 S.W.3d at 106.

Our decision to reverse and remand was based simply on the fact that the Commission was in essence reserving its decision until additional evaluations were made—something we held that it could not do. We recognized that there was evidence in the record, as it existed, to make necessary findings of fact and conclusions of law regarding the need for additional medical treatment. Consequently, we conclude, on this record, that the Commission did not err in modifying its original decision to reach findings/conclusions on that record concerning additional medical treatment for appellee, without additional medical evaluations being performed.

II. The Commission’s determination that claimant proved entitlement to the implantation of a dorsal column stimulator is not supported by substantial evidence.

The primary basis for appellants’ argument under this point lies in attacking the deposition testimony of Dr. Mahmood Ahmad. This court defers to the Commission in its determinations regarding the credibility of any witness. As we explained in *Cossey v. Thomas*, 2009 Ark. App. 666, at 8, 344 S.W.3d 684, 688:

The determination of the credibility and weight to be given a witness’s testimony is within the sole province of the Workers’ Compensation Commission;

the Commission 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. *Farmers Coop. v. Biles*, 77 Ark. App. 1, 69 S.W.3d 899 (2002). *The Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. Homes v. Beard*, 82 Ark. App. 607, 120 S.W.3d 160 (2003) (citing *Estridge v. Waste Management*, 343 Ark. 276, 33 S.W.3d 167 (2000)). Moreover, and importantly, the Commission is not bound by a doctor's opinion that is based largely on facts related to him by the claimant where there is no sufficient independent knowledge upon which to corroborate the claimant's claim. *Roberts v. Leo Hosp.*, 8 Ark. App. 184, 649 S.W.2d 402 (1983).

(Emphasis added.) Appellee was previously diagnosed with RSD. Dr. Ahmad testified that he confirmed the diagnosis of RSD when he saw appellee; he explained that the condition could wax and wane but never be cured; and he testified that only one visit with appellee was approved by appellants. Dr. Ahmad testified that appellee had a prior laser doppler and bone scan, and a repeat study would only be indicated if there was a question about the diagnosis. He further testified that at that meeting with appellee, he recommended the stimulator; that he thought appellee should be under the care of a pain specialist; that appellee was not at MMI from an RSD point of view; and that untreated RSD can result in a very debilitating condition. The ALJ/Commission determined appellee to be a credible witness who had cooperated with his doctors and his treatment, and he was also determined not to be a malingerer.

Fair-minded persons could reach the same conclusion reached by the Commission, *i.e.*, that future medical treatment, including implantation of the stimulator, is reasonable and necessary.

Cite as 2010 Ark. App. 13

Affirmed.

VAUGHT, C.J., and MARSHALL, J., agree.