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ARKANSAS COURT OF APPEALS

DIVISION II
No. CA09-828

	Opinion Delivered February 11, 2010
UNIMIN CORPORATION and ACE AMERICAN INSURANCE COMPANY APPELLANTS	APPEAL FROM THE ARKANSAS WORKERS' COMPENSATION COMMISSION
V.	[NO. F613086]
CONEY DUNCAN APPELLEE	AFFIRMED

LARRY D. VAUGHT, Chief Judge

Appellant Unimin Corporation appeals from an opinion and order of the Arkansas Workers' Compensation Commission awarding benefits to appellee Coney Joe Duncan Jr. Unimin argues that the Commission arbitrarily disregarded and failed to "properly examine" corporate records that, according to Unimin, objectively showed that Duncan's seizure disorder was not a result of his on-the-job head injury. After a careful review of the record, we are satisfied that substantial evidence supports the Commission's decision and affirm.

According to Duncan's testimony, he began working for Unimin[1] in September 1999, where he held several jobs—including bagging sand, loading rail cars, and driving a truck. During the last few years of his employment with Unimin, Duncan served the company as a

[1]Unimin is a sand-mining operation located in Guyon, Arkansas.

maintenance man. In November 2005, Duncan underwent surgery on his right shoulder. After returning to work, he worked until February 13, 2006, on light duty "testing sand samples for fineness." Thereafter, he returned to work in the maintenance area.

As a maintenance worker, he was responsible for assisting with the servicing and refurbishing of various types of equipment used at the plant, including the "mobile crusher."[2] He testified that the crusher was a recent addition to the plant, but was not new. Duncan noted that while he was still on light-duty assignment—sometime before February 13, 2006—he climbed to the top of the mobile crusher to inspect it. After returning to full-duty work—sometime after February 14, 2006—he received an assignment to assist in the refurbishment, including the rewiring, of the mobile crusher. According to Unimin's maintenance reports, Duncan's crusher job did not begin until March 8, 2006.

Although unable to recall a precise date, Duncan estimated that on February 2 or 3, 2006, he struck his head on a metal bar welded across the top of the ladder while preparing for his upcoming mobile-crusher rewiring job. He stated that upon impact he saw a "bright flash of light and became very nauseous, and had a headache the rest of the day." He sat down for a while, but eventually did return to work and completed his shift; later that evening he mentioned to his wife that he had hit his head at work.

The blow was witnessed by a co-worker, Dennis Sartin, who testified that he was working

[2]The mobile crusher is a piece of equipment used to crush rock for road-building material.

on the crusher[3] when Duncan injured his head. Another worker, James Stegeman, was ahead of Duncan on the ladder and did not see the accident but heard the impact of Duncan's head hitting the safety bar. Thereafter, co-workers became concerned because Duncan became dizzy and unresponsive from time to time. The first report of Duncan exhibiting apparent seizure-like activity came from another co-worker, Gary Wheatley, who claimed that he had noticed Duncan being disoriented while the two were working on the pulley-relocation job.[4] Duncan's wife took him to the emergency room in April 2006, after she noticed that he was exhibiting peculiar behavior while the two were visiting Branson, Missouri.

After extensive evaluation, Duncan was diagnosed with a seizure disorder. Each of his treating physicians opined that Duncan's seizure disorder was causally related to his workplace head injury. The record shows that Duncan accurately reported a history of heat stroke (and related headaches) in the earlier 1990s, and he specifically denied prior seizure-like activity. Unimin's company doctor also believed that the head injury was the cause of the seizure disorder, after considering Duncan's medical history. One other doctor, Dr. Gary T. Souheaver, opined that the seizure disorder could have been caused by the heat stroke or other idiopathic reason.

At the hearing, Unimin did not dispute that Duncan had hit his head at work, but it fought the origin of the seizure disorder. It attempted to prove that Duncan's prior heat stroke

[3]According to his maintenance records, Sartin's first crusher work assignment occurred on March 13, 2006.

[4]According to corporate job-slip records, the pulley job was completed on February 25, 2006.

(at age sixteen) was a plausible explanation for his disorder. Unimin anchored its argument on the fact that corporate work-schedule documents proved that Duncan's first (observed) seizure predated the head-hitting episode, and, as such, Duncan's claim must fail because proof of causation was lacking. The majority of the Commission rejected this reasoning and found Duncan to be credible and the majority of doctors' opinions to be persuasive. The Commission ultimately found that Duncan's seizure was occasioned by a compensable workplace injury and ordered that benefits be paid.

The dissenting Commissioner discredited the timing of the seizure disorder, finding the work records to be the definitive evidence that Duncan suffered from seizures before hitting his head. Unimin seizes on this opinion for its brief to our court. It rejects Duncan's memory relating to the timing and history of events and argues that the handwritten daily maintenance reports should have directed the Commission's findings and conclusions as to whether Duncan's seizure disorder predated his on-the-job head injury. It is Unimin's position that without such deference to and consideration of the work-assignment documents and records, substantial evidence does not support the Commission's decision to award Duncan benefits.

Substantial evidence exists only if reasonable minds could have reached the same conclusion without resort to speculation or conjecture. *White Consol. Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001). We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *Cedar Chem. Co. v. Knight*, 99 Ark. App. 162, 258 S.W.3d 394 (2007). Further (and of paramount import in this case), it is within the Commission's

province to reconcile conflicting evidence and to determine the true facts. *Stone v. Dollar Gen. Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005). However, the Commission may not arbitrarily disregard evidence. *See Roberts v. Whirlpool*, 102 Ark. App. 284, 284 S.W.3d 100 (2008).

Here, the outcome of this case rests on how we view the Commission's examination of the evidence. Indeed, the Commission's opinion awarding benefits to Duncan is silent as to the time-slip evidence. But, its failure to mention it does not support a conclusion that the evidence was "arbitrarily" disregarded. The Commission specifically credited the testimony of Duncan and his co-worker as to the temporal progression of the claim. It specifically found, based on the evidence presented at the hearing—specifically Wheatley's testimony—that the seizure episodes began *after* Duncan sustained an on-the-job head injury. Although there is no formal record of Duncan mounting the mobile-crusher machine before his first seizure, the *lack* of such documentation does not prove that he was not injured during the early part of February, just as he testified and the Commission believed.

Indeed, it would have been preferable for the Commission to outline the basis for its findings and conclusion as to when Duncan's injury occurred in the context of time-frame evidence submitted (particularly here, where the timing of events impacts the causation determination), but there is no requirement that it do so. Furthermore, as noted by Judge Pittman in his *Herndandez* concurrence,

> [w]hen we consider whether there is substantial evidence to sustain the Commission's findings, we review only the sufficiency of the evidence, not the weight thereof: the reviewing court in workers' compensation cases considers *only* the evidence that is most favorable to the Commission's findings, and we view

> and interpret that evidence, along with all reasonable inferences deducible therefrom, in the light most favorable to those findings. The preponderance of the evidence does not concern us. Weighing the evidence is within the sole province of the Commission, and questions of weight are beyond the scope of appellate review.

Hernandez v. Wal-Mart Associates, Inc., 2009 Ark. App. 531, 8. (Internal citations and footnotes omitted.) It was up to the Commission, as the finder of fact, to resolve (arguably) conflicting evidence regarding the date of Duncan's on-the-job head injury in relation to the onset of his seizure disorder. The evidence, viewed in the light most favorable to the Commission's findings, is such that reasonable minds could have reached the conclusion of the Commission without resort to speculation or conjecture. *White Consol. Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001). As such, we hold that the Commission did not arbitrarily disregard the job-slip records and that the Commission's decision, based upon Duncan's and his co-worker's credible testimony coupled with numerous supporting medical opinions, displays a substantial basis for the grant of relief and affirm.

Finally, we note that Unimin exhibited either a lack of knowledge or a lack of concern for our court's rules relating to the precedential value of unpublished opinions. Assuming that it is the former and not the latter, we remind Unimin of the simple and clear mandate set out in Arkansas Supreme Court Rule 5-2 (2009), which orders that unpublished opinions dated prior to July 1, 2009, "shall not be cited, quoted, or referred to by any court or in any argument, brief, or other materials presented to any court (except in continuing or related litigation upon an issue such as res judicata, collateral estoppel, or law of the case)."

Affirmed.

PITTMAN and ROBBINS, JJ., agree.