

ARKANSAS COURT OF APPEALS

DIVISION III
No. CA 09-1022

KARLA J. GILBERT

APPELLANT

V.

SONIC DRIVE-IN and FARMERS
INSURANCE EXCHANGE

APPELLEES

Opinion Delivered MARCH 31, 2010

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION, [NO. F513619]

AFFIRMED

JOHN B. ROBBINS, Judge

Appellant Karla Gilbert appeals the denial of her request for additional medical benefits, specifically pain management, by the Workers' Compensation Commission in her claim against appellee Sonic Drive-In. She did not obtain a favorable ruling from the administrative law judge (ALJ), who rejected her claim because she did not prove by a preponderance that her need for pain-management was causally related to her earlier compensable injury. After a de novo review, the Commission affirmed and adopted the ALJ's opinion as its own. Appellant contends on appeal to our court that the Commission's decision lacks a substantial basis for the denial of relief. We disagree and affirm the Commission's opinion.

We review a decision of the Workers' Compensation Commission to determine whether there is substantial evidence to support it. *Rice v. Georgia-Pacific Corp.*, 72 Ark. App. 149, 35 S.W.3d 328 (2000). Substantial evidence is relevant evidence that a reasonable mind

might accept as adequate to support a conclusion. *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). We review the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings, and we affirm if its findings are supported by substantial evidence. *Geo Specialty Chem. v. Clingan*, 69 Ark. App. 369, 13 S.W.3d 218 (2000). The issue is not whether we might have reached a different decision or whether the evidence would have supported a contrary finding; instead, we affirm if reasonable minds could have reached the conclusion rendered by the Commission. *Sharp County Sheriff's Dep't v. Ozark Acres Improvement Dist.*, 75 Ark. App. 250, 57 S.W.3d 764 (2001). It is the Commission's province to weigh the evidence and determine what is most credible. *Minn. Mining & Mfg. v. Baker*, 337 Ark. 94, 989 S.W.2d 151 (1999); *Buford v. Standard Gravel Co.*, 68 Ark. App. 162, 5 S.W.3d 478 (1999).

Arkansas Code Annotated section 11-9-508(a) (Repl. 2002) provides in relevant part that "the employer shall promptly provide for an injured employee such medical, surgical, hospital, . . . and nursing services and medicine . . . as may be reasonably necessary in connection with the injury received by the employee." Here, the key terms are "in connection with the injury."

To explain in more detail, appellant, a woman in her forties, had undergone bilateral carpal-tunnel-release surgeries in late 2004 that were unrelated to her work. She returned to work for Sonic with lifting restrictions. On March 16, 2005, appellant suffered left arm pain (wrist to elbow) following an incident at work where she carried a five-gallon bucket of ice

that weighed approximately twenty pounds. Sonic accepted this as a compensable aggravation of her left upper-extremity injury.

In a follow-up visit to her orthopedic surgeon, Dr. Oliver, on March 29, 2005, she reported that left wrist pain and swelling commenced during the recent lifting of ice buckets at work but had since resolved. Dr. Oliver was pleased overall with her recovery from the 2004 surgeries.

In May 2005, appellant reported to the insurance adjuster that her left arm was “pretty much healed” and that her right arm was presenting more trouble. On July 4, 2005, appellant was in an accident, either a vehicular accident or an ATV-type accident, that caused some soreness in her arms. There was a discrepancy between the medical records and appellant’s testimony about the actual incident and its impact on her extremities.

In her primary care physician’s notes, Dr. Hodges reported that she complained of left wrist pain only in March 2005 but none in the intervening visits for various medical issues through the end of August 2005. In another follow-up visit to Dr. Oliver, he noted on August 30, 2005, that appellant was having “vague” left-sided pain, which was accompanied by a notation of a July 2005 Jeep accident where her wrist was caught between the roll bars.

On October 28, 2005, Dr. Oliver performed a left ulnar-nerve neurolysis and submuscular transposition. Appellant went back for additional follow-up visits (November and December 2005, January 2006) during which Dr. Oliver observed progressive healing but noted continued complaints of left-extremity pain and numbness. Dr. Oliver urged appellant to cease smoking to improve her recovery.

Appellant presented to Dr. Richardson (Dr. Oliver's replacement) in March 2006 expressing miserable pain, cold, and numbness related to her left hand. Dr. Richardson did not believe he could improve upon her prior surgeries, so he referred her for pain management to Dr. Varela. Dr. Varela saw appellant in April 2006 and noted pain and numbness in well-calloused left fingers. Dr. Varela opined that she was at maximum medical improvement based upon her subjective symptoms failing to correlate with her objective findings. Dr. Varela had suspicions of "secondary gain issues."

In October 2006, appellant returned to her primary care physician, Dr. Hodges, who refused to see her further due to her inappropriate acquisition of additional pain medications from other doctors.

By May 2007, appellant was seen by Dr. Marcia Hixon who recommended pain management for her left-extremity issues. Additional nerve conduction studies were consistent with, but not positive for, mild carpal tunnel syndrome and mild ulnar neuropathy.

Appellant testified before the ALJ that she always worked in restaurant management, and that in March 2005 she was working on the Sonic crew. Appellant denied stating to the insurance adjuster that her left arm was better in May 2005. She said that if she said "left", she must have been confused due to multiple medications (for pain, depression, and other issues) and that she meant to say her right arm in that conversation. Appellant said that she was confused at times but that she had tried to be as honest as her abilities would allow. Appellant said she could not hold her grandchild as she would like, she was unable to perform household tasks like she once could, and she was constantly in pain and could not work. To

the extent there were any inconsistencies between her testimony and her doctors's notations, she said her doctors must have been mistaken.

Appellant's daughter testified that appellant appeared to be in a lot of pain after her lifting injury and sometimes confused due to her pain medications. Appellant's daughter believed her mother to be a hard worker who was truly unable to do things due to her continued left-arm problems.

After considering the medical exhibits and testimony presented, the ALJ found that appellant had failed to carry her burden of proof to demonstrate that her need for pain management in May 2007 was causally related to the ice-bucket incident in March 2005. The ALJ discussed her testimony and the conflicts between it and the recorded statement and medical records, noting that appellant's testimony was less than consistent. The ALJ found that the March 16, 2005 incident was a temporary aggravation to her left extremity that resolved by March 29, 2005, and thus her request for pain management in May 2007 was denied as not causally related to the ice-bucket incident.

Appellant argues that her need for pain management is a natural and probable consequence of the March 16, 2005 lifting incident at work. Although she acknowledges that she had pre-existing conditions that affected both her upper extremities, she claims that the only reasonable conclusion why she suffers such extreme constant left-sided pain is that the work incident caused it. Appellant asserts to us that the inconsistencies between her testimony and what is reflected in her medical records are mere errors on her medical providers's part, not hers.

The issue for resolution is whether the 2005 work-related injury caused the need for pain management in 2007. What constitutes reasonably necessary treatment under the statute is a question of fact for the Commission. *Patchell v. Wal-Mart Stores*, 86 Ark. App. 230, 184 S.W.3d 31 (2004). A claimant may be entitled to ongoing medical treatment, if the medical treatment is geared toward management of the claimant's injury. See *Hydroponics, Inc. v. Pippin*, 8 Ark. App. 200, 649 S.W.2d 845 (1983).

The ALJ and the Commission herein determined that the compensable injury, limited in this case to the ice-bucket lifting incident, did not cause the need for pain management two years later. There was evidence upon which the ALJ could find that the March 16, 2005 injury had resolved by the end of March 2005. The weight of the medical evidence and the credibility of the witnesses were matters left to the fact-finder to resolve. Applying the proper standard of review, we affirm this appeal.

Affirmed.

HART and HENRY, JJ., agree.