

## ARKANSAS COURT OF APPEALS

DIVISION II  
No. CA09-1116

DONNA GREENFIELD

APPELLANT

V.

CONAGRA FOODS, INC., SEDGWICK  
CLAIMS MANAGEMENT SERVICES,  
SECOND INJURY FUND, and DEATH &  
PERMANENT TOTAL DISABILITY  
TRUST FUND

APPELLEES

**Opinion Delivered** APRIL 7, 2010

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION  
[NO. F407232]

AFFIRMED

---

**M. MICHAEL KINARD, Judge**

Donna Greenfield appeals from the decision of the Arkansas Workers' Compensation Commission denying her claim for permanent-partial disability benefits and permanent-total disability benefits. We affirm the decision of the Commission.

Appellant sustained a compensable injury to her cervical spine on February 23, 2004, when she slipped and fell while working on the line at Conagra. Appellant was diagnosed by the employer's doctor, Dr. Ron Bates, with a cervical strain. Dr. James Zelch and Dr. Scott Schlesinger also diagnosed appellant with a cervical strain. All three physicians prescribed non-surgical treatment. Dr. Bates returned appellant to work without restrictions on March 31, 2004. Dr. Schlesinger returned appellant to work without restrictions on June 7, 2004. Prior to her February 23, 2004 injury, appellant had undergone two lumbar spine surgeries.

The physician who performed appellant's prior lumbar surgeries, Dr. Zachary Mason, reviewed her MRI and diagnosed her with a disc herniation at C6-7 and spondylosis at C5-6. On August 19, 2004, Dr. Mason performed surgery on appellant's cervical spine. In October 2004, Dr. Mason returned appellant to work at regular duty. Appellees controverted appellant's entitlement to the treatment by Dr. Mason and the parties litigated the issue before the Commission. In an opinion filed September 8, 2006, the Commission found that appellant's accident on February 23, 2004, resulted in a cervical strain, not an acute injury, and that the surgery performed by Dr. Mason was not reasonably necessary in connection with appellant's compensable injury. Appellant appealed to this court, which affirmed the decision of the Commission. See *Greenfield v. Conagra*, CA 06-1339 (Ark. App. May 30, 2007) (unpublished opinion). No further appeal was taken.

Appellant subsequently filed a claim with the Commission seeking permanent-partial disability benefits and either wage-loss disability benefits or permanent-total disability benefits. Conagra contended that appellant was not entitled to permanent-partial disability benefits and that any award of wage-loss disability benefits would be the responsibility of the Second Injury Fund (Fund), which was joined as a party. The Fund contended that, because there was no permanency, the issue of wage-loss was moot. The Death & Permanent Total Disability Trust Fund was also joined as a party. It stated that, if the Second Injury Fund were found not to have liability and appellant were found to be permanently totally disabled, it would pay the necessary benefits.

At the hearing before the administrative law judge (ALJ), appellant's husband, Danny Greenfield, testified that, prior to appellant's injury on February 23, 2004, appellant worked nine to ten hours a day at Conagra and engaged in such extracurricular activities as riding four-wheelers and playing with her son, activities she could no longer perform following her 2004 injury. Mr. Greenfield testified that appellant went back to work after her prior back and foot surgeries and worked until her cervical surgery following her 2004 injury. Mr. Greenfield further testified that appellant helped take care of her elderly parents and helped care for him after he broke his leg in December 2007.

Appellant testified that, at the time of the hearing, she was forty-seven years old and had twelve years of education. At the time of her compensable injury, appellant had worked for Conagra for over twenty years. Appellant testified that she returned to work at full duty following her foot and back surgeries that preceded her compensable neck injury. Following her neck surgery, appellant returned to work intermittently for a period of time. Appellant last worked on August 2, 2005, after which she decided she could not continue working. The Social Security Administration determined that appellant was totally disabled, and she began drawing social security disability benefits. On her application for disability, appellant listed all of her surgeries. Appellant testified that she assisted in caring for her parents. Appellant also testified that Dr. Mason did not place any physical restrictions upon her following her neck surgery.

In an opinion filed December 22, 2008, the ALJ found that appellant was not entitled to permanent-partial disability benefits or permanent-total disability benefits. The finding regarding permanent-partial disability benefits rendered the claim for wage-loss disability benefits moot, and it was not discussed in the opinion.<sup>1</sup> Appellant appealed to the Commission, and in an opinion filed August 17, 2009, the Commission affirmed and adopted the decision of the ALJ. Appellant filed a notice of appeal on September 17, 2009.

In reviewing a decision of the 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).

---

<sup>1</sup>To be entitled to any wage-loss disability benefits in excess of permanent physical impairment, a claimant must first prove, by a preponderance of the evidence, that she sustained permanent physical impairment as a result of a compensable injury. *Wal-Mart Stores, Inc. v. Connell*, 340 Ark. 475, 478, 10 S.W.3d 882, 884 (2000) (citing *Smith v. Gerber Prods.*, 54 Ark. App. 57, 922 S.W.2d 365 (1996)).

Appellant argues on appeal that the Commission's 2006 opinion and this court's 2007 opinion affirming the opinion of the Commission do not bar her claim for permanent-partial disability benefits and that she is entitled to benefits commensurate with a six-percent rating to the body as a whole. In 2006, the Commission determined that appellant sustained a cervical strain on February 23, 2004. Dr. Mason, the physician who assessed appellant a six-percent impairment rating due to the findings on the MRI and the cervical surgery, testified at a deposition that a cervical strain is not a condition for which an impairment rating can be assigned. As such, there is no basis upon which to award permanent-partial disability benefits. Although appellant had not previously litigated the issue of permanent-partial disability benefits, the Commission's determination that her injury in 2006 did not result in an injury for which an impairment rating could be assigned necessarily leads to the conclusion that she is not entitled to permanent-partial disability benefits for that injury. Therefore, the Commission's decision denying such benefits displays a substantial basis for the denial and is affirmed.

Appellant also argues that the Commission's decision to deny her claim for permanent-total disability benefits is not supported by substantial evidence.<sup>2</sup> "Permanent total disability" means inability, because of compensable injury or occupational disease, to earn any meaningful wages in the same or other employment. Ark. Code Ann. § 11-9-519(e)(1)

---

<sup>2</sup>This court has held that a permanent physical impairment rating is not necessary in order for an injured employee to be awarded permanent-total disability benefits. See *Rutherford v. Mid-Delta Cmty. Servs., Inc.*, 102 Ark. App. 317, 285 S.W.3d 248 (2008).

(Repl. 2002). The burden of proving the inability to earn any meaningful wages is on the employee. Ark. Code Ann. § 11-9-519(e)(2) (Repl. 2002). Permanent benefits may be awarded only if the compensable injury was the major cause of the disability or impairment. Ark. Code Ann. § 11-9-102(4)(F)(ii)(a) (Supp. 2009).

The only evidence produced at the hearing to indicate that appellant is unable to earn meaningful wages as a result of her compensable injury was the testimony of appellant and her husband. All of appellant's physicians have returned her to work full-duty with no restrictions. Also, no medical provider has indicated that appellant is unable to work. In support of her argument, appellant cites the following language from the ALJ's opinion: "I recognize that appellant may be permanently and totally disabled as a result of various other conditions and surgeries. However, the appellant's compensable injury would not be the cause of such permanent and total disability." The ALJ, whose opinion was adopted by the Commission, made a clear determination that appellant failed to prove by a preponderance of the evidence that she is unable to earn meaningful wages *as a result of her compensable injury*. Given the lack of support in the medical evidence for appellant's contention that she is entitled to permanent-total disability benefits, the Commission had a substantial basis upon which to deny such benefits. Accordingly, the decision of the Commission is affirmed.

Affirmed.

GLADWIN and GLOVER, JJ., agree.