

## ARKANSAS COURT OF APPEALS

DIVISION III

No. CA09-876

BOBBY CLARK CONSTRUCTION  
and CINCINNATI INSURANCE  
COMPANY

APPELLANTS

V.

BOBBY CLARK

APPELLEE

**Opinion Delivered** APRIL 28, 2010

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION  
[NO. F613418]

AFFIRMED

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### JOSEPHINE LINKER HART, Judge

The Arkansas Workers' Compensation Commission found that appellee, Bobby Clark, was entitled to additional medical services. Appellants argue that substantial evidence does not support the Commission's award of additional medical services and that the Commission arbitrarily disregarded evidence. We affirm the Commission's decision.

In 2005, appellee sustained a compensable injury to his lumbar spine in the form of a herniated intervertebral disc at the L5-S1 level. Appellee was provided medical services, including surgery in 2006 that was performed by Dr. Michael Standefer. In 2007, appellee sought medical treatment from Dr. Christopher Boxell. Dr. Boxell provided testing and evaluation of appellee and recommended that appellee undergo surgical replacement of the L5-S1 intervertebral disc. Appellants asserted before the administrative law judge (ALJ) that the surgery was not "reasonably necessary in connection with" appellee's injury, which a

claimant must show by a preponderance of the evidence. Ark. Code Ann. §§ 11-9-102(4)(E)(i), 508(a) (Supp. 2009).

According to the ALJ's opinion, Dr. Boxell opined that appellee's pain symptoms were the result of physical damage and scarring involving the L5-S1 intervertebral disc and surrounding structures, including the L5 vertebra, and that surgical replacement of the damaged L5-S1 intervertebral disc with an artificial disc would have a seventy percent chance of significantly reducing or alleviating appellee's chronic pain in his lower back and lower extremities. The ALJ also noted that, in contrast, Dr. Standefer recommended only continued conservative care. The ALJ found that Dr. Boxell's medical opinion was entitled to greater weight and credit than Dr. Standefer's medical opinion, noting Dr. Boxell's considerable expertise and experience in disc replacement surgery. Further, the ALJ noted that Dr. Standefer's opinion on the reasonableness and necessity of the disc-replacement surgery was in substantial part based upon his belief that appellee's chronic symptoms, particularly pain, were not sufficiently severe to justify the surgery. The ALJ, however, found that appellee sustained significant damage to his L5-S1 intervertebral disc in his 2005 accident and suffered further damage from the 2006 surgery. The ALJ found credible appellee's testimony regarding the chronicity and magnitude of his back and leg pain. Thus, the ALJ awarded additional medical services provided and recommended by Dr. Boxell. The Commission adopted the ALJ's opinion.

In reviewing the Commission's decisions, we view the evidence and all reasonable

inferences deducible therefrom in the light most favorable to the Commission's findings, and we affirm if the decision is supported by substantial evidence. *SSI, Inc. v. Cates*, 2009 Ark. App. 763, 350 S.W.3d 421. The Commission has the duty of weighing medical and other evidence, and the resolution of conflicting evidence is a question of fact for the Commission. *Id.*

Appellants readily acknowledge that this "case really boiled down to one of credibility." But as it is permitted to do, the Commission accorded greater weight to appellee's testimony and Dr. Boxell's opinion rather than Dr. Standefer's opinion. Appellants, however, further assert that the Commission arbitrarily disregarded video surveillance tapes taken of appellee showing him bending and stooping without difficulty. They state that the ALJ's opinion did not mention this evidence. Appellants assert that these tapes effectively call appellee's credibility into question.

The Commission may not arbitrarily disregard evidence. *Unimin Corp. v. Duncan*, 2010 Ark. App. 119. It is clear, however, that the Commission considered the testimony of appellee, Dr. Boxell, and Dr. Standefer. Each witness was questioned about appellee's physical activities as shown on the surveillance tapes, and the ALJ's opinion specifically mentions that Dr. Standefer was shown excerpts from the tapes and opined that appellee was not experiencing lumbar pain that was of the requisite degree of severity. But, as noted above, the Commission accorded greater weight to the testimony presented by appellee and Dr. Boxell. Accordingly, we cannot say that the Commission arbitrarily disregarded the evidence, and we

Cite as 2010 Ark. App. 357

hold that substantial evidence supports the Commission's decision. *See id.* (holding that the Commission did not arbitrarily disregard evidence even though the evidence was not mentioned in the Commission's opinion).

Affirmed.

PITTMAN and BAKER, JJ., agree.