

ARKANSAS COURT OF APPEALS

DIVISION I
No. CA10-334

ST. JOSEPH'S MERCY HEALTH
CENTER and SISTERS OF MERCY
HEALTH SYSTEM

APPELLANTS

V.

JIMMIE REDMOND

APPELLEE

Opinion Delivered SEPTEMBER 22, 2010

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[F805104]

REVERSED AND REMANDED

KAREN R. BAKER, Judge

Appellants St. Joseph's Mercy Medical Center and Sisters of Mercy Health System appeal the decision of the Workers' Compensation Commission finding in favor of awarding Jimmie Redmond's claim for additional treatment and additional workers' compensation benefits. Appellants argue two points on appeal: (1) the additional medical treatment was not authorized, and (2) the additional temporary-total-disability benefits are neither reasonable nor necessary. We hold that the ALJ's opinion, which was adopted by the Commission, fails to set forth sufficient findings of fact to support the decision and reverse and remand for the Commission to make specific findings of fact.

Redmond worked as a housekeeper for St. Joseph's Mercy Health Center ("St. Joseph's") in Hot Springs, Arkansas. On April 15, 2008, Redmond fell on a tile floor at St. Joseph's. The evidence is uncontroverted that Redmond suffered a compensable injury to

his right shoulder during the course and scope of his employment with St. Joseph's. Redmond was treated at St. Joseph's on the date of the injury by Dr. Larry Ramsey, who diagnosed Redmond with a right-shoulder strain. Dr. Ramsey again saw Redmond on April 23, 2008, when he reaffirmed the diagnosis and noted that it was not resolving. Dr. Michael Atta, a physician in the same clinic, later examined Redmond and ordered an MRI. The MRI revealed a focal-full-thickness partial-width distal supraspinatus tendon tear. Dr. Atta referred Redmond to an orthopedic surgeon and returned Redmond to work with restrictions until he was able to see a surgeon.

Dr. Bruce Smith, an orthopedic surgeon, diagnosed Redmond with severe impingement and possible rotator cuff tear prior to surgery. Dr. Smith performed acromioplasty of the right shoulder on May 20, 2008. The postoperative diagnosis was a severe impingement of the right shoulder. Redmond returned to see Dr. Smith on May 30, 2008, June 16, 2008, June 30, 2008, July 14, 2008, and July 22, 2008. At the July 14, 2008 appointment, Dr. Smith determined that maximum benefit had been received and released Redmond to return to work without restrictions. Redmond returned to see Dr. Smith on July 22, 2008, still having pain and difficulties with his shoulder. At this appointment, Dr. Smith noted that Redmond was not happy about being released to return to work and that he appeared unable to actively flex his elbow; Dr. Smith stated "we need to consider getting a second opinion and we will defer this to workman's comp, pending their approval, etc." At this point, appellants controverted the claim, including Dr. Smith's recommendation.

Redmond testified at the hearing that after being released to return to work, he complained continually to the human resources department at St. Joseph's regarding his problems with his shoulder. He also testified that human resources informed him that he would have to prove he needed additional medical treatment beyond Dr. Smith's treatment, and told him to go to his own doctor. Redmond stated at the hearing that he sought approval from appellants to see Dr. Tucker. Appellants argue that by the time the approval was sought, Redmond had already changed physicians. There is no evidence whether appellants provided Redmond with notice of his rights through a Form AR-N. The ALJ made no findings on this point.

On July 22, 2008, Redmond went to see a physician of his choosing, Dr. Roy Puen. Dr. Puen's examination found that Redmond had a frozen shoulder, and he referred him to Dr. Paul Tucker. On August 8, 2008, Redmond saw Dr. Tucker. Dr. Tucker observed that Redmond had swelling and thickening in his right hand and could not straighten his elbow. He also noted that Redmond had a nodule at the base of his thumb and some serious problems remaining in his right shoulder. Dr. Tucker restricted Redmond to light duty work. Redmond testified that he spoke with both HR and his manager, and they informed him that no light duty work was available. Dr. Tucker saw Redmond again on September 12, 2008, when he noted visually apparent differences in Redmond's shoulders and hands. Dr. Tucker noted that Redmond suffered from rotator cuff syndrome and kept him on light duty work only. Dr. Tucker referred Redmond to Dr. Arthur for injections, but Redmond

did not seek out further treatment due to the expense.

When reviewing a decision of the Workers' Compensation Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the findings of the Commission and affirm that decision if it is supported by substantial evidence. *Crossett Sch. Dist. v. Gourley*, 50 Ark. App. 1, 899 S.W.2d 482 (1995). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Wright v. ABC Air, Inc.*, 44 Ark. App. 5, 864 S.W.2d 871 (1993). The issue is not whether we might have reached a different result or whether the evidence would have supported a contrary finding; even if a preponderance of the evidence might indicate a contrary result, if reasonable minds could reach the Commission's conclusion, we must affirm its decision. *St. Vincent Infirmary Med. Ctr. v. Brown*, 53 Ark. App. 30, 917 S.W.2d 550 (1996).

Appellants allege that Redmond did not comply with the statutory requirements for a change of physician, completely barring any compensable benefits for treatment after July 22, 2008. Redmond counters that the treatment is not unauthorized because the change-of-physician rules do not apply during a controverted period.

We are obliged to strictly construe and apply the workers' compensation act. Ark. Code Ann. § 11-9-704(c)(3) (Repl. 2002). In this case, it is not disputed that Redmond sought additional treatment from Dr. Puen and Dr. Tucker. Treatment or services furnished or prescribed by any physician other than the ones selected according to the foregoing, except

emergency treatment, shall be at the claimant's expense. Ark. Code Ann. § 11-9-514(b) (Repl. 2002). When a claimant desires a change of physician, he must petition the Commission for approval. *See Sharp v. Lewis Ford, Inc.*, 78 Ark. App. 164, 78 S.W.3d 746 (2002); Ark. Code Ann. § 11-9-514(a)(2)(A) (Repl. 2002). The claimant is entitled to petition the Commission one time only for a change, and the Commission may approve the change with or without a hearing. *See id.* What is unclear from the ALJ's opinion is whether approval was sought pursuant to the statutory requirements.

In the October 7, 2009 order, the ALJ set forth the following findings of fact and conclusions of law:

1. There was an April 15, 2008, compensable injury.
2. The temporary total disability rate is \$403.
3. The claimant has proven by a preponderance of the evidence that the additional medical [treatment] he requested is reasonable and necessary.
4. Respondents are liable for the reasonable and necessary medical benefits.
5. The claimant has proven by a preponderance of the evidence that he remained in his healing period and unable to earn wages from August 8, 2008, through a date to be determined.

The ALJ concluded that the additional medical treatment Redmond pursued was reasonable and necessary and related to his compensable injury. This conclusion lacks sufficient findings of fact for us to determine whether substantial evidence supports the decision to approve additional medical benefits. There is no question on appeal whether Redmond sought approval of a change-of-physician request: he did not. Rather, the issue is whether an exception to the change-of-physician rules applied in this case. While there is an exception to filing the change-of-physician forms under Ark. Code Ann. § 11-9-514, when the claim

has been controverted, this is governed by subsection (f) of the statute. The ALJ made no findings to support this exception.¹

This court relies upon the Commission to clearly articulate its findings of fact because we do not review the Commission's decisions de novo. *Sonic Drive-In v. Wade*, 36 Ark. App. 4, 6, 816 S.W.2d 889, 890-91 (1991). It is beyond the power of an appellate court to make findings of fact. *Burkett v. Exxon Tiger Mart, Inc.*, 2009 Ark. App. 93, 304 S.W.3d 2. When the Commission fails to make specific findings on an issue, it is appropriate to reverse and remand the case for the Commission to make such findings. *Flynn v. Southwest Catering Co.*, 2009 Ark. App. 641. Accordingly, we reverse and remand for additional findings of fact on this issue.

Appellants also argue that the Commission erred in awarding Redmond temporary-total-disability benefits. In order that this case not be decided piecemeal on appeal, we conclude that it should be remanded to the Commission for a specific finding on the issue of whether the requirements of section 11-9-514 were met before we consider any other issues presented. See *Flynn, supra* (citing *Sonic Drive-In v. Wade, supra*).

Reversed and remanded.

¹Redmond argues that the absence of appellant's introduction of a Form AR-N into evidence at the hearing shows that appellants knew the claim was controverted. In the required course of explaining a claimant's rights to a change of physician, claimants are given a notice via a Form AR-N, which specifically advises claimants of their rights. The change-of-physician rules are inapplicable where a claimant is not given the required notice. Ark. Code Ann. § 11-9-514(c)(2); see *Stephenson v. Tyson Foods, Inc.*, 70 Ark. App. 265, 19 S.W.3d 36 (2000). Again, the ALJ made no findings on this issue, and we cannot determine whether substantial evidence supports such an assertion.

Cite as 2010 Ark. App. 629

GRUBER and HENRY, JJ., agree.