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# ARKANSAS COURT OF APPEALS

DIVISION I

No. CV-18-472

ARKANSAS HIGHWAY; AND  
TRANSPORTATION DEPARTMENT  
AND ARKANSAS INSURANCE  
DEPARTMENT, PUBLIC EMPLOYEE  
CLAIMS DIVISION

APPELLANTS

V.

JOSEPH WORK

APPELLEE

**Opinion Delivered:** December 5, 2018

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION

[NOS. G007596, G306766, G407852,  
G602717]

AFFIRMED

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## WAYMOND M. BROWN, Judge

The Arkansas Highway and Transportation Department (AHTD) and Arkansas Insurance Department, Public Employee Claims Division, appellants, appeal from an order of the Arkansas Workers' Compensation Commission (Commission) finding that appellee was entitled to a 30 percent (30%) anatomical impairment rating to the body as a whole as well as a 65 percent (65%) wage-loss award. Appellants contend that the evidence is insufficient to support the Commission's award. We find no error and affirm.

Appellee worked for appellant AHTD for nearly eleven years driving a dump truck or low boy. During that time, appellee suffered four separate compensable injuries: August 2010, injury to lumbar spine; August 2013, injury to lumbar spine; June 2014, injury to lumbar spine; February 2016, injury to lumbar spine and cervical spine.

Appellee underwent several surgeries as a result of the injuries, a majority of which were performed by Dr. Arthur Johnson. However, Dr. Kyle Mangels performed appellee's last surgical procedure in August 2016. Dr. Johnson assigned appellee a 16 percent (16%) impairment rating to the body as a whole in January 2014. The rating was accepted and paid by appellants. Appellee received a 3 percent (3%) impairment rating for his 2016 injury, which was also accepted and paid. Appellee filed a claim contending that he was entitled to an impairment rating for his June 2014 injury as well as permanent partial-disability benefits for wage loss and a controverted attorney's fee.

Appellants requested an impairment-rating report from Dr. Mangels. In a report dated August 4, 2017, Dr. Mangels opined that appellee had a total impairment rating of 30 percent (30%). Appellants also had Dr. Bruce W. Randolph to prepare an impairment-rating report. In the report dated August 14, 2017, Dr. Randolph opined that appellee had a total impairment rating of 28 percent (28%). At the time of the hearing, appellants maintained that appellee only had a 28 percent (28%) impairment rating to his body as a whole and agreed to pay benefits based on that amount. However, appellee maintained that he was entitled to the 30 percent (30%) rating assigned by Dr. Mangels. The Administrative Law Judge (ALJ) agreed that appellee was entitled to the 30 percent (30%) rating, finding in pertinent part:

I agree based upon my finding that Dr. Mangels' opinion is credible and entitled to great weight. Dr. Mangels was the claimant's authorized treating physician and performed the last surgical procedure on claimant's lumbar spine. Dr. Randolph was not the claimant's authorized treating physician and Dr. Randolph has not examined the claimant but instead has only reviewed medical records. Based on this evidence, I find that Dr. Mangels' opinion is entitled to greater weight.

Accordingly, based on Dr. Mangels' opinion, which I find to be credible and in accordance with the AMA Guides, I find that claimant's total anatomical impairment equals 30% to the body as a whole.

The ALJ's opinion in regard to appellee's entitlement to wage loss, stated in pertinent part:

The next issue for consideration involves the extent of claimant's wage loss. Notably, claimant does not contend that he is permanently totally disabled. Pursuant to A.C.A. §11-9-522(b)(1) when considering claims for permanent partial disability benefits in excess of the percentage of permanent physical impairment, the Commission may take into account various factors including the percentage of impairment as well as the employee's age, education, work experience, and all other matters reasonably expected to affect his future earning capacity.

Here, as previously discussed, the claimant has a 30% impairment as a result of his compensable injuries. On May 15, 2017, Dr. Mangels assigned claimant a 20-pound lifting restriction. Dr. Mangels also completed a form specific to the respondent indicating that claimant could constantly perform data entry/typing and simple grasping work. Dr. Mangels indicated that claimant could frequently stand/walk, sit, and push and pull. Dr. Mangels indicated that claimant could occasionally twist, bend, squat, kneel, climb, reach, flag traffic, weedeat, operate foot controls, and drive a car/truck. Claimant presented these restrictions to the respondent and was informed that no work was available within those restrictions.

The claimant is a 52-year-old man and he has a 12th grade education. Claimant worked for the respondent driving a truck for eleven years. Prior to his employment with the respondent claimant worked driving a truck for Fed Ex. Claimant testified that in the performance of that job he was required to load and unload trailers and also work on the dock. Claimant performed this job for 18 ½ years. Prior to his employment with Fed Ex the claimant worked for Lowe's.

When claimant was not returned to work by the respondent, it offered claimant vocational rehabilitation with Heather Taylor. Taylor is a vocational rehabilitation counselor and she testified at the hearing. Taylor testified that she met with the claimant in June in order to complete a vocational evaluation. In the course of that evaluation Taylor gave the claimant a Wide Range Achievement Test which measures academic achievement in four different areas. Claimant's test results included Word Reading at the grade equivalent of 4.8; Sentence Comprehension at a grade equivalent of 7.0; Spelling at the grade equivalent of 3.5; and Math Computation at the grade equivalent level of 4.5.

Taylor testified that claimant did not have many skills that would transfer into his current physical capacity of work which is light duty.

As far as his skills that would transfer into his current physical capacity of work, which is light duty, he didn't have a tremendous amount of transferrable skills. He had a very limited skill set that would transfer into a light category, so, therefore, the occupations that he would be able to pursue in a light category would likely be of an unskilled or semi-skilled nature that didn't require education beyond high school or any prior experience or any type of thing that didn't require probably beyond on-the-job training.

Because claimant had not used a computer for any of his jobs in the last twenty years, Taylor recommended that claimant undergo a basic computer course at the Adult Education Center. Claimant testified that he enrolled in those classes and other than a period of time he missed following the death of his father he has attended those classes.

Taylor went on to testify that to date she has identified four jobs that claimant might be able to perform. These jobs include work as a cashier at a hotel in Fort Smith; a cashier for Aramark at the University of Arkansas-Fort Smith; direct support professional for Friendship Community in Fort Smith; and van driver for Area Agency on Aging in Paris. Claimant testified that he had applied for each of those jobs but had not obtained employment. In addition, claimant testified that he also applied for various other jobs as required in order to receive unemployment compensation benefits.

Finally, Taylor testified that claimant had been cooperative in her efforts to provide vocational rehabilitation.

The primary negative in this case for claimant involves the results of a functional capacities evaluation which was performed on May 3, 2017. The evaluation report indicates that the results of the evaluation show that claimant put forth an unreliable effort with 45 of 58 consistency measures within expected limits. The report also stated:

Although he reported and/or demonstrated numerous functional limitations during his evaluation, he also exhibited numerous inconsistencies which invalidated his entire evaluation. Therefore, his current functional status remains unknown at this time due to his failure to produce sufficient objective data to substantiate his reported and/or demonstrated limitations.

Although Dr. Mangels subsequently assigned the claimant permanent restrictions, he indicated in his May 15, 2017 report:

Basically the functional capacity evaluation is unreliable and we can't really use it. I can't use it to give him permanent restrictions.

Thus, while Dr. Mangels assigned claimant permanent restrictions, his true functional status remains unknown due to the inconsistencies present during the functional capacities evaluation. This is a factor to be considered in determining the extent of wage loss. *City of Fayetteville v. Guess*, 10 Ark. App. 313, 663 S.W. 2d 946 (1984).

After consideration of all relevant wage loss factors in this case, I find that claimant has suffered a loss in wage earning capacity in an amount equal to 65% to the body as a whole. Based on the evidence presented, claimant has obviously suffered a significant loss in wage earning capacity. He has few transferrable skills and based on testing his academic skills range from the grade equivalent of 3.5 to 7.0. On the other hand, claimant's inconsistent effort on the functional capacities evaluation invalidated his evaluation. Respondent has controverted claimant's entitlement to permanent partial disability benefits in an amount equal to 65% to the body as a whole.

Appellants timely appealed the ALJ's opinion to the Commission. The Commission affirmed and adopted the ALJ's decision in an opinion dated February 13, 2018. Under Arkansas law, the Commission is permitted to adopt the ALJ's opinion.<sup>1</sup> In so doing, the Commission makes the ALJ's findings and conclusions the findings and conclusions of the Commission.<sup>2</sup> Therefore, for purposes of our review, we consider both the ALJ's opinion and the Commission's majority opinion.<sup>3</sup>

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<sup>1</sup>*SSI, Inc. v. Cates*, 2009 Ark. App. 763, 350 S.W.3d 421.

<sup>2</sup>*Id.*

<sup>3</sup>*Id.*

It is the Commission's duty to make determinations of credibility, to weigh the evidence, and to resolve conflicts in medical testimony and evidence.<sup>4</sup> We review the Commission's decision in the light most favorable to its findings and affirm when the decision is supported by substantial evidence.<sup>5</sup> Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>6</sup> The issue is not whether the appellate court might have reached a different result from the Commission but whether reasonable minds could reach the result found by the Commission: if so, the appellate court must affirm.<sup>7</sup>

As their first point on appeal, appellants contend that the finding that appellee is entitled to a 30 percent (30%) impairment rating is not supported by substantial evidence. Appellants maintain that appellee was entitled to only the 28 percent (28%) rating given by Dr. Randolph, whom appellants claim clearly documented his calculations. Dr. Mangels was appellee's treating physician and he performed the last surgery on appellee, which alone can be the basis for affirming the impairment rating.<sup>8</sup> The Commission was confronted with two different medical opinions as to appellee's impairment rating. It is within the Commission's province to reconcile conflicting evidence, including the medical evidence.<sup>9</sup>

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<sup>4</sup>*Martin Charcoal, Inc. v. Britt*, 102 Ark. App. 252, 284 S.W.3d 91 (2008).

<sup>5</sup>*Parker v. Atl. Research Corp.*, 87 Ark. App. 145, 189 S.W.3d 449 (2004).

<sup>6</sup>*Id.*

<sup>7</sup>*Prock v. Bull Shoals Boat Landing*, 2014 Ark. 93, 431 S.W.3d 858.

<sup>8</sup>*Guy v. Breeko*, 310 Ark. 187, 832 S.W.2d 816 (1992) (per curiam).

<sup>9</sup>*Boykin v. Crockett Adjustment Ins.*, 2013 Ark. App. 157.

The Commission has the duty of weighing medical evidence, and the resolution of conflicting evidence is a question of fact for the Commission.<sup>10</sup> It is well settled that the Commission has the authority to accept or reject medical opinion and the authority to determine its medical soundness and probative force.<sup>11</sup> This is a classic “dueling-doctors” case in which this court is bound by the Commission’s findings. Thus, we cannot say that there is not substantial evidence to support the Commission’s decision. Therefore, we affirm.

Appellants also contend that the Commission’s finding of 65 percent (65%) wage-loss disability is not supported by substantial evidence. Pursuant to Arkansas Code Annotated section 11-9-522(b)(1),<sup>12</sup> when a claimant has an impairment rating to the body as a whole, the Commission has the authority to increase the disability rating based on wage-loss factors.<sup>13</sup> The wage-loss factor is the extent to which a compensable injury has affected the claimant’s ability to earn a livelihood.<sup>14</sup> The Commission is charged with the duty of determining disability based on a consideration of medical evidence and other factors affecting wage loss, such as the claimant’s age, education, and work experience.<sup>15</sup>

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<sup>10</sup>*See Ark. Human Dev. Ctr. v. Courtney*, 99 Ark. App. 87, 257 S.W.3d 554 (2007).

<sup>11</sup>*Id.*

<sup>12</sup>(Repl. 2012).

<sup>13</sup>*Redd v. Blytheville Sch. Dist. No. 5*, 2014 Ark. App. 575, 446 S.W.3d 643.

<sup>14</sup>*Lee v. Alcoa Extrusion, Inc.*, 89 Ark. App. 228, 201 S.W.3d 449 (2005).

<sup>15</sup>*Redd, supra.*

Motivation, postinjury income, credibility, demeanor, and a multitude of other factors are matters to be considered in claims for wage-loss-disability benefits in excess of permanent-physical impairment.<sup>16</sup>

Here, the Commission considered appellee's age, his limited education,<sup>17</sup> and his lack of transferable skills based on his work history over the past twenty years; it considered appellee's motivation; it also considered appellee's unreliable functional-capacity evaluation, as well as other factors. It subsequently concluded that appellee was entitled to 65 percent (65%) wage-loss disability. As part of its argument, appellants argue that the Commission considered a non-work-related injury in its calculations as well as a 4 percent (4%) impairment rating to appellee's shoulder that already existed. However, there is no evidence that the Commission considered anything other than what it was asked to consider. The Commission's findings are based on the appropriate wage-loss factors, and its opinion adequately discusses the rationale that underlies that finding. In sum, appellants are requesting that we reweigh the evidence and credibility findings made by the Commission; however, as we stated above, it is the Commission's duty to make credibility determinations and to weigh the evidence. We hold that reasonable minds could reach the result found by the Commission. Accordingly, we affirm.

Affirmed.

GRUBER, C.J., and GLADWIN, J., agree.

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<sup>16</sup>*Id.*

<sup>17</sup>Although he had a twelfth-grade education, his academic skills were between a 3.5 to 7.0 grade equivalent.

*Charles H. McLemore Jr.*, for appellants.

*Walker, Shock & Harp, PLLC*, by: *Eddie H. Walker, Jr.*, for appellee.