

ARKANSAS COURT OF APPEALS

DIVISION II

No. CA11-687

TERRY PRUITT

APPELLANT

V.

HEALTHSOUTH CORPORATION and
ESIS

APPELLEES

Opinion Delivered DECEMBER 14, 2011

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. F703316]

AFFIRMED

JOSEPHINE LINKER HART, Judge

The Arkansas Workers' Compensation Commission found that Terry Pruitt failed to prove by a preponderance of the evidence that she sustained a permanent impairment as a result of her compensable injury. She argues on appeal that substantial evidence does not support the Commission's finding and that the case should be remanded for the Commission to assess the extent of her permanent impairment. When the Commission denies a claim because of a claimant's failure to meet her burden of proof, we affirm if the Commission's opinion displays a substantial basis for the denial of relief. *Singleton v. City of Pine Bluff*, 97 Ark. App. 59, 244 S.W.3d 709 (2006). We affirm.

Pruitt, who at the time of the compensable injury was a forty-nine-year-old nurse, injured her lumbar spine on September 19, 2006, while lifting a patient. She was seen on September 21, 2006, by Dr. Terry Clark, who noted "left paralumbar tenderness to



palpitation with spasm.” An MRI on October 3, 2006, showed “early degenerative changes of the lower lumbar spine” with “no focal disc herniations.” An electromyogram on April 2, 2007, showed what “could be compatible but is not diagnostic of a left S1 radiculopathy.” She was seen by Dr. Michael Wolfe on December 12, 2007, who noted that “some of her symptoms may sound radicular in nature but this has not been proven by any physical examination findings or any findings on MRI.” Dr. Wolfe saw Pruitt a final time on January 24, 2008.

Pruitt was seen by Dr. Richard S. Kyle, who opined in a letter dated March 31, 2008, that Pruitt reached her maximum medical improvement in September 2006. He further noted that the MRI of her lumbar spine did not reveal any structural injuries, and there was no herniation, stenosis, or root compression. He concluded that there was “no permanent impairment rating for this incident as defined.” Further, he stated, “I cannot find any structural or objective finding to keep her off work.” He also noted that her functional capacity exam showed that she “gave an unreliable effort some 73% of the time.”

In a letter dated November 3, 2009, Dr. Wolfe opined that although Pruitt’s “pain appeared to be mechanical, she did have radicular symptoms.” He noted that the previous MRI showed only evidence of “degenerative changes without evidence of disc protrusion or herniation.” He concluded that “because she does have disc symptoms and because of her limited motion, she would have a 7% impairment rating,” and further, “the lost motion in three planes would add an additional 6% of impairment, giving her a 13% permanent impairment.” In a letter dated November 30, 2009, Dr. Wolfe stated that the “impairment rating was based on passive range of motion.”



In an opinion adopted by the Commission, the administrative law judge agreed with Dr. Wolfe’s assessment that the MRI showed only degenerative changes without evidence of disc protrusion or herniation. The administrative law judge noted that Dr. Wolfe “based his anatomical impairment rating of 13% on subjective complaints of pain and limited motion,” but given the statutory “prohibition against range of motion tests and complaints of pain for objective findings of anatomical impairment rates,” the administrative law judge gave Dr. Wolfe’s opinion “little weight.” The administrative law judge also considered Dr. Kyle’s opinion that Pruitt had no permanent impairment. The administrative law judge concluded that Pruitt failed to prove by a preponderance of the evidence that she sustained a permanent impairment.

On appeal, Pruitt asserts that the Commission denied her claim because the MRI did not show any objective injury and because Dr. Wolfe assessed the impairment rating based on loss of range of motion. She notes that Dr. Clark found objective evidence of injury in the form of spasms in 2006. Pruitt also observes that the 2007 electromyogram was abnormal. She asserts that the Commission relied on the administrative law judge’s “erroneous conclusion that the absence of objective evidence of injury on an MRI means there is no basis for the assessment of permanent impairment.” Pruitt further contends that Dr. Wolfe’s “method of assessment was improper,” and that the Commission should have determined her impairment rating. Pruitt, however, does not specifically challenge Dr. Kyle’s assessment.

Our workers’ compensation law provides that “[a]ny determination of the existence or extent of physical impairment shall be supported by objective and measurable physical or mental findings.” Ark. Code Ann. § 11-9-704(c)(1)(B) (Repl. 2002). “Objective findings”



are defined as “those findings which cannot come under the voluntary control of the patient.” Ark. Code Ann. § 11-9-102(16)(A)(i) (Supp. 2011). Further, the statutes provide that “[w]hen determining physical or anatomical impairment, neither a physician, any other medical provider, an administrative law judge, the Workers’ Compensation Commission, nor the courts may consider complaints of pain.” Ark. Code Ann. § 11-9-102(16)(A)(ii)(a). Also, “[f]or the purpose of making physical or anatomical impairment ratings to the spine, straight-leg-raising tests or range-of-motion tests shall not be considered objective findings.” Ark. Code Ann. § 11-9-102(16)(A)(ii)(b).

While medical evidence of the injury and impairment must be supported by objective findings, there is no requirement that medical testimony be based solely or expressly on objective findings. *Singleton, supra*. We are mindful that this court has previously held that when there are objective findings, it is improper for the Commission to reject an impairment rating for the reason that it was based in part on subjective findings. *Id.* Here, however, the Commission was confronted with two opposing medical opinions, Dr. Wolfe’s 13% impairment rating and Dr. Kyle’s opinion that Pruitt had no permanent impairment. It is within the Commission’s province to reconcile conflicting evidence, including the medical evidence. *Hernandez v. Wal-Mart Assoc., Inc.*, 2009 Ark. App. 531, 337 S.W.3d 531. In finding that Pruitt was not entitled to a permanent impairment rating, the Commission considered the conflicting medical evidence and gave less weight to Dr. Wolfe’s opinion. Thus, we cannot say that there is not substantial evidence to support the Commission’s decision.

Affirmed.

GLOVER and MARTIN, JJ., agree.