

## ARKANSAS COURT OF APPEALS

DIVISION III  
No. CA11-667

MIGUEL SERRANO

APPELLANT

V.

GEORGE'S and CROCKETT  
ADJUSTMENT

APPELLEES

**Opinion Delivered** December 14, 2011

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION  
[NO. G000622]

AFFIRMED

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**RITA W. GRUBER, Judge**

Miguel Serrano appeals the decision of the Arkansas Workers' Compensation Commission that found he failed to prove that he suffered a compensable injury. Mr. Serrano contended at a hearing before the administrative law judge that in the course and scope of his employment on December 4, 2009, at a time when employment services were being rendered, he sustained an infection to his left foot that resulted in hospitalization and extensive medical care. The law judge denied Mr. Serrano's claim upon finding that he failed to prove by a preponderance of the evidence that his injury occurred within the course of his employment. The Commission adopted and affirmed. Serrano raises one point on appeal, contending that there is no substantial evidence to support the Commission's decision. We affirm.

An accidental injury must arise out of and in the course of employment in order to be compensable. Ark. Code Ann. § 11-9-102(4)(A)(i) (Supp. 2009). The burden of proof of



a compensable injury shall be on the employee. Ark. Code Ann. § 11-9-704(c)(2). Additionally, a claimant must prove a causal relationship between the employment and the injury in order to prove a compensable injury. *McMillan v. U.S. Motors*, 59 Ark. App. 85, 953 S.W.2d 907 (1997). In determining whether a party has met the burden of proof, administrative law judges and the Commission shall weigh the evidence impartially and without giving the benefit of the doubt to any party. Ark. Code Ann. § 11-9-704(c)(4).<sup>1</sup>

In reviewing decisions from the Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings, and we will affirm if the decision is supported by substantial evidence. *Cedar Chem. Co. v. Knight*, 372 Ark. 233, 273 S.W.3d 473 (2008). Substantial evidence exists only if reasonable minds could have reached the result shown by the Commission's decision without resort to speculation or conjecture. *White Consol. Indus. v. Galloway*, 74 Ark. App. 13, 45 S.W.3d 396 (2001). When a claim is denied because of the claimant's failure to meet his burden of proof, the substantial-evidence standard of review requires that we affirm the Commission's decision if its opinion displays a substantial basis for the denial of relief. *Robinson v. Family Dollar Stores, Inc.*, 2011 Ark. App. 172. The appellate court defers to the Commission on issues involving the weight of the evidence and the credibility of the witnesses. *Freeman v. Con-Agra Frozen Foods*, 344 Ark. 296, 40 S.W.3d 760 (2001).

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<sup>1</sup>This provision, enacted by Act 10 of the Second Extraordinary Session of 1986, changed the previous law in which the claimant was given the benefit of the doubt on factual determinations. See *Wade v. Mr. C. Cavanaugh's*, 298 Ark. 363, 768 S.W.2d 521 (1989); *Marrable v. Southern LP Gas, Inc.*, 25 Ark. App. 1, 751 S.W.2d 15 (1988). We note that Serrano, arguing for reversal of the Commission's decision, relies in part on cases decided under the prior law.



Under these standards, we review the present case. Evidence at the August 12, 2010 hearing before the administrative law judge included testimony by forty-seven-year-old Mr. Serrano; the deposition testimony of Mr. Serrano and his treating physician, Dr. Stephen Hennigan; and Mr. Serrano's medical records. The medical records show that on December 5, 2008, Mr. Serrano was hospitalized at Mercy Medical Center in Rogers with complaints of a blackened, swollen right great toe and left second toe. He was discharged on December 8, 2008, after debridement and antibiotic treatment. He was subsequently treated at Mercy's Wound Care Center, which discharged him from treatment on January 16, 2009. He returned to work at George's Poultry Plant and continued working until November 2, 2009, when he was hospitalized at Northwest Medical Center in Springdale with complaints involving his left great toe and the area between the second and third right toes. He was treated and released from Northwest on November 6, 2009, in "good" condition, with a diagnosis of diabetic foot ulcers, cellulitis, and diabetic management (DM). He was instructed to receive follow-up care from a clinic in a week, to continue oral medications for diabetes management if unable to obtain insulin, to get diabetic shoes, and to work in dry areas only.

Mr. Serrano returned to work at George's on November 24, 2009, and continued working until December 4, 2009. On December 7, 2009, he was hospitalized for a third time with complaints involving his left second toe, and he was not discharged from the hospital until December 18, 2009. He did not return to work at George's or elsewhere after December 4, 2009. He returned to Dr. Hennigan in June 2010 for care of his left foot, third toe; Dr. Hennigan subsequently testified that he did not know if this was "a new infection or



the same process spread.”

Mr. Serrano testified that he had been diagnosed in Mexico fourteen years earlier with diabetes, he had been prescribed medications at that time, and he was currently taking medications. He said that he had no foot infections during previous employment at other poultry plants, where he worked under the following conditions. The area where he worked in a Tyson plant was dry, differing from the wet area at George’s. He explained, “They would give us boots [at Tyson], and they would take it out of our checks.” There was water next to the dry area where he worked at a Petit Jean plant, but there was no water in his environment.

On the production line at George’s, however, water fell onto him all the time when he cut wings from wet chickens. He was given a protective apron but no protective boots, and there was not a store where he could buy them. There were no regulations about the kind of shoes to be worn, and he wore tennis shoes throughout each shift. Water would splash onto his protective apron and then the tips of his feet, causing his shoes to remain “all wet” until he could take them off at the end of the day. He was hospitalized for diabetic foot ulcers three times after beginning work for George’s. He did not pursue the follow-up care as instructed by November 6, 2009 discharge orders of his second hospitalization because he lacked financial means, nor did human resources make work available to him in a dry area at that time.

Mr. Serrano filed no workers’ compensation claim for previous hospitalizations of December 2008 and November 2009, which occurred during his time of employment at



George's. In his claim he attributed only his third infection to his feet remaining wet at George's during his work shift. He testified that he did not tell his supervisors water caused the foot problems leading to hospitalization for that infection on December 4, 2009, and that his previous foot ulcers had not been completely healed when he returned to work on November 24, 2009. He remained under Dr. Hennigan's care on the date of hearing, August 12, 2010. Mr. Serrano stated that he had not worked since the past December but would accept a job at George's if they were to offer him work in a dry area.

In a letter to Mr. Serrano's attorney, Dr. Hennigan wrote that if Mr. Serrano's feet had been exposed to water from the wet chicken, "the resultant maceration . . . would clearly be the primary cause of his infection." He explained, "[W]hen skin becomes macerated it loses its integrity to prevent bacterial invasion. Were his skin not macerated this infection would have been unlikely to occur." Dr. Hennigan repeated this opinion in his deposition.

Mr. Serrano argues on appeal, as he did below, that water from the chicken-cutting process ran down his apron and onto his shoes; that this caused his feet to remain wet all day, allowing infection to enter his foot; and that there would have been no infection otherwise. He points to Dr. Hennigan's statement about exposure to chicken runoff, in which Hennigan explained that macerated skin loses its integrity to prevent bacterial invasion and opined that it was unlikely infection would have occurred had the feet not been macerated. Mr. Serrano concludes, contrary to the decision of the Commission, that his left-foot infection and hospitalization arose soon after and were logically attributable to exposure to wet conditions when he returned to work, with nothing to suggest any other explanation for his condition.



The Commission has the authority to accept or reject a medical opinion. *Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002). It is within the Commission's province to reconcile conflicting evidence and to determine the true facts. *Cedar Chem. Co. v. Knight*, 372 Ark. 233, 273 S.W.3d 473 (2008). The Commission may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief, and the reviewing court is foreclosed from determining the credibility and weight to be accorded to each witness's testimony. *Id.* If reasonable minds could have reached the result shown by the Commission's decision, we must affirm. *Sys. Contracting Corp. v. Reeves*, 85 Ark. App. 286, 151 S.W.3d 18 (2004).

Here, the Commission noted that the issue before it was whether Mr. Serrano's December 2009 infection and subsequent hospitalization were causally related to his job activity following his return to work on November 24, 2009. The Commission assigned little weight to Dr. Hennigan's opinion that the infection resulting in Mr. Serrano's December 7, 2009 hospitalization was caused by exposure to water at work, as opposed to a continuation of a preexisting infection, for which Serrano had been hospitalized a month earlier. In doing so, the Commission found that Dr. Hennigan had been unaware of Mr. Serrano's November 2–6, 2009 hospitalization for left-foot ulcers and was unable to determine if the December infection was a new infection or simply a continuation of the previous one; that Dr. Hennigan considered not just the work of the ten-day period from November 24, 2009, through December 4, 2009, but all the work Mr. Serrano performed at George's; and that Dr. Hennigan had no idea what the work situation was actually like. The Commission noted that



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Mr. Serrano had not followed discharge instructions in November 2009 and had developed another problem with his left foot after release from care for the December 2009 infection.

The Commission concluded that Mr. Serrano failed to meet his burden of proving by a preponderance of the evidence that his left-foot infection resulted from his work at George's on or about December 4, 2009. The Commission's opinion, as summarized above, displays a substantial basis for the denial of this claim. We therefore affirm the Commission's decision.

Affirmed.

VAUGHT, C.J., and PITTMAN, J., agree.