

Cite as 2022 Ark. App. 151

ARKANSAS COURT OF APPEALS

DIVISION III

No. CV-21-230

COOPER TIRE & RUBBER
COMPANY AND CENTRAL
ADJUSTMENT COMPANY, INC.,
TPA

APPELLANTS

V.

WILL HILL

APPELLEE

Opinion Delivered April 6, 2022

APPEAL FROM THE ARKANSAS
WORKERS' COMPENSATION
COMMISSION
[NO. H001165]

AFFIRMED

BART F. VIRDEN, Judge

Cooper Tire & Rubber Company and Central Adjustment Company, Inc. (Cooper), appeal the decision of the Arkansas Workers' Compensation Commission (Commission) that Will Hill's claim for medical and temporary total-disability benefits is not barred by the statute of limitations. Cooper argues that the Commission's decision is an error of law and not supported by substantial evidence. We disagree and affirm.

On appeal, this court views the evidence and all reasonable inferences in the light most favorable to the Commission's decision and affirms that decision when it is supported by substantial evidence. *Wilhelm v. Parsons*, 2016 Ark. App. 56, 481 S.W.3d 767. The Commission determines where the preponderance of the evidence lies. *Id.* Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.* There may be substantial evidence to support the Commission's decision

even though we might have reached a different conclusion if we had sat as the trier of fact or heard the case de novo. *Id.* It is exclusively within the province of the Commission to determine the credibility and the weight to be accorded to each witness's testimony. *Id.* We will not reverse the Commission's decision unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusions arrived at by the Commission. *Id.* Additionally, evidence is reviewed impartially, without giving any benefit of the doubt to either party. Ark. Code Ann. § 11-9-704 (Repl. 2012).

A claim for compensation for disability on account of an injury shall be barred unless filed with the Commission within two years from the date of the compensable injury. Ark. Code Ann. § 11-9-702(a)(1) (Repl. 2012). The statute of limitations for gradual-onset injuries, such as carpal-tunnel syndrome, begins to run when the injury becomes apparent to the claimant. *La-Z-Boy Mfg., Inc. v. Bruner*, 2016 Ark. App. 117, 484 S.W.3d 700. The claimant's awareness that the injury is causally related to the working environment is not an element of the inquiry. *Id.*

On appeal, Cooper argues that Hill's 2019 claim is barred by the two-year statute of limitations because he was aware of his injury as early as 2014, when he reported bilateral arm pain to his doctor, or as late as 2017, when he reported tingling and numbness in his forearms and hands to his chiropractor.

In the November 2020 opinion, the administrative law judge (ALJ) concluded that Cooper's February 2020 claim for workers'-compensation benefits was not barred by the statute of limitations because his awareness of his injury did not definitively occur until August 1, 2019, when he was diagnosed with carpal-tunnel syndrome, though his awareness

could have been as early as May 30, when his doctor told him that he might have carpal-tunnel syndrome. The ALJ found the following. Hill had worked for Cooper for twenty-five years, and for the last three and a half years, Hill was employed as a VMI operator, which required strenuous work involving his upper body and entailed hand-intensive, repetitive movement. During the three and a half years before his current job, he worked as a buffer attendant, which was physically strenuous and hand intensive as well. Before that, Hill had two different jobs that required using a hand wrench and pulling a hoist. Hill had previous medical issues with his neck and shoulder related to a compensable work-related neck injury that occurred around 2010, and he began reporting tingling and numbness in his hands to his treating physician around 2014 or 2015, which was attributed to his neck injury. Since the 2010 injury, Hill was diagnosed with degenerative disc disease in his neck and had undergone treatment for his condition for several years. In June 2017, Hill saw Dr. Stacy Warner who noted in a postappointment report that Hill “complained of left trapezius, left posterior shoulder, left triceps, left posterior hand, dull, aching and tingling.” In December, Hill saw Dr. Michael McAlister and complained of symptoms related to his right shoulder and was “assessed with ‘radiculopathy of the cervical region and other medical conditions,’” which he continued to believe were related to degenerative disc disease. In April 2018, Hill saw Dr. Brittany Ackley and complained to her of pain in his shoulder, neck, and upper arms along with tingling, numbness, and discomfort. By September, Hill’s chief complaint to Dr. Ackley was of neck pain, though he also reported tingling in his first fingers and numbness in his right hand. He also told Dr. Ackley that he could barely walk, sit, or stand. Dr. Ackley ordered an MRI, and the imaging report stated that Hill had

multilevel degenerative disc disease and facet arthropathy. In April 2019, Dr. Ackley referred Hill to Dr. James Wages, a spine-care specialist, for pain management. Hill complained to Dr. Wages of severe bilateral numbness and pain in his arms and hands and severe neck pain due to a previous injury. Dr. Wages treated Hill with steroid injections. In May, Hill injured his wrist while he was working and was sent to HealthCare Express, the work-related-injury clinic. An x-ray showed no injury to Hill's wrist, and he was told to rest for a couple of days. On May 30, Hill saw Dr. Marcus Smith, and he complained of arm pain and numbness in his hand and severe neck pain that he attributed to his previous neck injury. Dr. Smith ordered a bilateral EMG and nerve-conduction study of the upper extremities and stated in his report that "[Hill] is going to have a pretty significant carpal tunnel component to his pain syndrome." The nerve-conduction study showed that Hill had "CTS bilaterally with superimposed cervical radiculopathy confirmed on the right[.]" On August 1, Dr. Smith explained the results of the study to Hill and explained the surgical procedure to treat his carpal-tunnel syndrome. Shortly thereafter, before his first surgery, Hill contacted the medical union representative and spoke to Rosemary Weems, the human-resources manager, about his work-related claim for his upcoming surgery. On August 23, Hill had surgery on his left hand, and on October 4, he had surgery on his right hand. In February 2020, he filed a claim for payment of benefits for the days he missed work for his surgeries and recovery periods from August 23 to September 8, and from October 4 through October 19. Hill also included a claim for medical expenses relating to Dr. Smith's treatment, testing, and medical care.

The ALJ found that Hill did not realize that his symptoms were not related to his previous neck injury and degenerative disc disease until he was diagnosed with carpal-tunnel syndrome by Dr. Smith. The ALJ concluded that Hill's 2010 neck injury and degenerative disc disease made it difficult for him to identify his carpal-tunnel syndrome. The ALJ determined that the first date Hill "had any possible inclination that his hands/wrists were the culprit of his symptoms" was May 30, 2019, when Dr. Smith voiced his suspicion of carpal-tunnel syndrome. The ALJ found that when the testing confirmed Dr. Smith's diagnosis, and when he reported the results to Hill, "the claimant's bilateral carpal tunnel syndrome became definitively apparent to him."

Cooper appealed to the Full Commission, and the Commission affirmed and adopted the ALJ's decision. On appeal, Cooper argues that "[t]he test for when a gradual onset injury arises is not when a claimant becomes aware of his diagnosis, or even when the diagnosis becomes apparent to the claimant's medical care providers" and that "the claimant's carpal tunnel injury manifested and became apparent at least by [2014 or 2015.]"

Both parties cite *Pina v. Wal-Mart Stores, Inc.*, 91 Ark. App. 77, 208 S.W.3d 236 (2005), in support of their arguments on appeal. In *Pina*, the claimant told her supervisor in October 1999 of numbness in her hands that extended to her forearms and elbows. Pina did not go to the doctor, but her job duties were changed to accommodate her symptoms. In March 2000, after a motor-vehicle accident, Pina complained to a doctor of neck, back, and shoulder pain and explained that in the past, she had numbness in her hands and forearms that became chronic numbness and tingling. In January 2001, during an annual examination, she complained of wrist and elbow pain and reported numbness and burning in her hands.

Pina, 91 Ark. App. at 81, 208 S.W.3d at 238. In January 2002, Pina’s symptoms became worse, and she reported an injury to both hands to her supervisor and completed an “associate’s statement” for workers’ compensation. Pina was sent to the company doctor who suspected carpal-tunnel syndrome. After a nerve-conduction study was performed, Pina was diagnosed with carpal-tunnel syndrome in both hands. The following day, Pina had an appointment with an orthopedic surgeon who opined that her occupation was of a “contributory nature” to her carpal-tunnel symptoms. *Id.* at 82, 208 S.W.3d at 238. The Commission found that “because her symptoms were sufficient to voice a complaint to her supervisor in October 1999, her injury became apparent to her by at least October 1999.” *Id.* at 85, 208 S.W.3d at 240. We affirmed the Commission’s finding that Pina’s April 2002 carpal-tunnel-syndrome claim was barred by the statute of limitations because she first reported her symptoms to her supervisor in October 1999, which marked her awareness of her injury.

We agree that our holding in *Pina* applies to the instant case, and the two-year period for Hill to file a claim began when he was aware of his injury; however, there is an important factual distinction between *Pina* and the instant case regarding the claimant’s awareness. Here, the Commission found that Hill’s awareness of his injury was delayed by years of misdiagnosis or underdiagnosis. Indeed, each medical provider Hill saw from 2014 until his appointment with Dr. Smith on May 30, 2019, attributed his symptoms to the 2010 neck injury, cervical radiculopathy, and degenerative disc disease—a fact not present in *Pina*. The ALJ made extensive findings regarding Hill’s medical history and the incomplete and obfuscating diagnoses that occurred from 2014 to 2019 and found that Hill was not aware

of his carpal-tunnel injury due to the medical-diagnosis error. The Full Commission affirmed the decision. In short, Pina—under the facts of that case—was aware of her injury when she reported it to her employer. Here, Hill’s awareness of his carpal-tunnel injury began when he was finally informed that his symptoms were not related to his previous neck injury and the degenerative disc disease. Under these facts, the claimant’s diagnosis and awareness coincide. In light of the substantial evidence supporting the Commission’s decision that Hill’s awareness was delayed, we affirm.

Affirmed.

ABRAMSON and MURPHY, JJ., agree.

Barber Law Firm, by: *Karen H. McKinney*, for appellants.

Miller, James, Miller & Hornsby, L.L.P., by: *Paul Miller*, for appellee.