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**ARKANSAS COURT OF APPEALS**

DIVISION IV

No. CV-22-559

JOHNSON CONTROLS, INC., AND  
SEDGWICK CLAIMS MANAGEMENT  
SERVICES, INC.

APPELLANTS

V.

WESLEY MILLER

APPELLEE

Opinion Delivered April 19, 2023

APPEAL FROM THE ARKANSAS  
WORKERS' COMPENSATION  
COMMISSION

[NO. H004236]

AFFIRMED

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**WAYMOND M. BROWN, Judge**

Appellants Johnson Controls, Inc. (Johnson or employer), and Sedgwick Claims Management Services, Inc. (Sedgwick CMS or insurance carrier),<sup>1</sup> appeal from the July 28, 2022, opinion of the Arkansas Workers' Compensation Commission (Commission) that affirmed and adopted the February 11, 2022, findings of the administrative law judge (ALJ). There was no dispute that appellee Wesley Miller suffered compensable injuries in a June 23, 2020, work-related auto accident. However, Johnson argues that no substantial evidence supports the Commission's finding that Miller's low back injury was causally related to the accident and that his back surgery was reasonable and necessary medical treatment. We affirm.

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<sup>1</sup>References to Johnson in this opinion necessarily include the insurance carrier, Sedgwick CMS.

Miller, a security-system service technician employed by Johnson for more than twenty years, was struck from behind by a semi-tractor trailer while driving a company vehicle in the course of his employment. The parties stipulated that Miller sustained a compensable injury to the right side of his body, including his right shoulder, right arm, and lower back. At the hearing before the ALJ on November 16, 2021, by agreement of the parties, the issues to be litigated were limited to whether Miller was entitled to (1) additional medical services as recommended by Dr. Gannon Randolph in the form of surgical intervention to Miller's lower back; (2) temporary total-disability benefits from August 7, 2021, to a date yet to be determined; and (3) attorney's fees. Miller contended that the medical services recommended by Dr. Randolph were reasonably necessary for his compensable injury. It was Johnson's contention that Miller had received all medical and indemnity benefits to which he was entitled.

After a hearing on the matter and reviewing the record as a whole, including medical reports, the ALJ made the following findings of fact and conclusions of law, which were then later affirmed and adopted by the Commission:

1. The stipulations agreed to by the parties at the pre-hearing conference conducted on September 8, 2021, and contained in a Pre-hearing Order filed that same date are hereby accepted as fact.
2. The claimant has proven by a preponderance of the evidence that he is entitled to the surgical intervention recommended by Dr. Gannon Randolph for his admittedly compensable low back injury.
3. The claimant has proven by a preponderance of the evidence that he is entitled to temporary total disability benefits from August 7, 2021 to a date yet to be determined.
4. The claimant's attorney is entitled to an attorney's fee on all indemnity benefits awarded herein.

Johnson was ordered to (1) pay the costs associated with Miller's surgical intervention that was recommended by Dr. Randolph, including his aftercare; (2) pay Miller temporary total-disability benefits from August 7, 2021, until a date yet to be determined; and (3) pay Miller's attorney the maximum statutory attorney's fees on the indemnity benefits awarded, with one half of said attorney's fees to be paid by Johnson in addition to the disability benefits; and one-half of said attorney's fees to be withheld by Johnson from the disability benefits pursuant to Arkansas Code Annotated section 11-9-715.<sup>2</sup>

In reviewing decisions of the Commission, appellate courts view the evidence and all reasonable inferences in the light most favorable to the Commission's findings, and the decision will be affirmed if it is supported by substantial evidence.<sup>3</sup> Substantial evidence exists if reasonable minds could reach the Commission's conclusion.<sup>4</sup> We do not reverse a decision of the Commission unless we are convinced that fair-minded persons with the same facts before them could not have reached the conclusion arrived at by the Commission.<sup>5</sup>

Typically, this court reviews only the decision of the Commission, not that of the ALJ; however, when the Commission affirms and adopts the ALJ's opinion as its own, as it did here, we consider both the ALJ's decision and the Commission's opinion.<sup>6</sup>

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<sup>2</sup>(Repl. 2012).

<sup>3</sup>*Livermore v. Madison Cnty. Judge*, 2014 Ark. App. 617, 447 S.W.3d 130.

<sup>4</sup>*Flynn v. Sw. Catering Co.*, 2010 Ark. App. 766, 379 S.W.3d 670.

<sup>5</sup>*Crossett Sch. Dist. v. Gourley*, 50 Ark. App. 1, 899 S.W.2d 482 (1995).

<sup>6</sup>*Ozark Nat. Food v. Pierson*, 2012 Ark. App. 133, 389 S.W.3d 105.

We defer to the Commission’s findings on what testimony it deems credible, and the resolution of conflicting evidence is a question of fact for the Commission.<sup>7</sup> The Commission has the authority to accept or reject medical opinion and to determine its medical soundness and probative force.<sup>8</sup>

On appeal, Johnson argues that following the accident, “Miller’s primary complaint was his shoulder and elbow.” Johnson contends that, upon examination at the Washington County Regional Medical Center emergency department, Miller indicated pain in his right shoulder and elbow that worsened with movement. Additionally, he indicated pain in the right side of his neck. He failed to complain of a back-related issue until seven weeks after the accident, when, on August 14, 2020, he indicated to Dr. Andrew Heinzelmann that he was experiencing right hip pain. Johnson argues that not only did Miller fail to complain about back pain in his initial examination after the accident, the record demonstrates that he failed to mention back issues “during any of several visits to many doctors who treated him after the accident.” Johnson contends that although Miller’s first complaint concerning back pain came nearly two months after the auto accident, Miller told Dr. Heinzelmann that the low back pain began on the date of the accident. Johnson further argues that “nothing in the medical records connects Miller’s low back pain to the accident other than Miller’s claim, made for the first time seven weeks after the accident, that he had low back pain since the accident.” Johnson asserts that the evidence demonstrates “Miller’s low back pain did not arise until nearly two months after the June 23, 2020, accident.” Johnson urges this court to reverse the Commission’s finding that

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<sup>7</sup>*J.B. Hunt Transp. Servs., Inc. v. Hollingsworth*, 2016 Ark. App. 279, 497 S.W.3d 197.

<sup>8</sup>*Id.*

Miller's back surgery was reasonable and necessary treatment because he failed to establish a causal connection between the accident and the back injury.

As an initial matter, on appeal, Johnson disputes that Miller's low back injury was causally connected to the work-related auto accident. However, we observe that the causal link between the back injury and the accident was not an issue before the Commission. By stipulation, the parties agreed, and it was accepted as fact, that Miller "sustained a compensable injury to the right side of his body to include the right shoulder, right arm, and lower back." Consequently, the only issue properly before this court is the Commission's finding that Miller proved by a preponderance of the evidence entitlement to the surgery recommended and ultimately performed by Dr. Randolph for Miller's admittedly compensable low back injury.

On August 14, 2020, while receiving treatment at Ozark Orthopedics by Dr. Heinzelmann, Miller complained of right hip and leg pain. Miller was then referred to Dr. George Deimel to evaluate whether his hip and leg pain were related to a low back injury. Dr. Deimel's assessment found that Miller's symptoms suggested lumbosacral radicular pain, and there was concern for potential fracture of his right hip/thigh. Following MRI findings that Miller displayed severe right and moderate left foraminal stenosis at the L5-S1 level, Miller participated in physical therapy. However, because he experienced only mild improvement as a result of the physical therapy, Dr. Deimel treated Miller's hip and leg pain with epidural steroid injections on November 17, 2020, and February 2, 2021.

On February 18, Miller was again seen by Dr. Deimel. The medical report states, in part:

[Miller] has undergone treatments for his low back and right leg pain. This has included physical therapy, medication management, and injections. The most recent injection did not provide any lasting relief. He states that he had an episode after the injection where neither

of his legs worked. His leg function has returned. He still has significant pain. We discussed a range of treatment options. At this point we will move forward with surgical consultation. He does have severe right neuroforaminal stenosis at the L5-S1 level. We will see if there are any surgical options for him. I will refer him to Dr. Gannon Randolph to discuss. I do think electrodiagnostic testing would be helpful given his rather complicated history with prior lower extremity fracture. I also anticipate Dr. Randolph is going to want electrodiagnostic testing to help him with some surgical decision making. We talked about his work status. He is concerned that if he doesn't pursue further intervention, that he would not be able to work. We talked about the role of a functional capacity evaluation. I told him that this would be part of the process rather or not he pursued surgery or not. Given the pending surgical decisions, we will hold on any declaration of his work status with continued restrictions as previously outlined.

On April 20, Miller was seen by Dr. Randolph, an orthopedic surgeon. Following examination, Dr. Randolph's assessment stated:

The patient with low back and bilateral leg pain consistent with his severe foraminal stenosis right L5-S1 and moderate left L5-S1. He is failed conservative measures with PT physical therapy injections and time. Really the best option for the patient is L5-S1 ALIF [anterior lumbar interbody fusion surgery] with MIS [minimally invasive spine] PSIF [posterior spinal instrumentation and fusion]. This will address his by foraminal stenosis degenerative change and sagittal deformity.

Following Dr. Randolph's determination that low back surgery presented Miller with the best chance of obtaining lasting relief from the symptoms resulting from his compensable low back injury, Johnson sent Miller to Dr. Luke Knox and Dr. Wayne Bruffett for second opinions. Dr. Knox stated he did not believe surgery was in Miller's best interest and considered surgery to be ill-advised. Dr. Bruffett examined Miller on October 25. After the examination, Dr. Bruffett opined:

I do think [Miller's] low back complaints are related to his motor vehicle accident of June 2020. That is by his report. Surgery as recommended by Dr. Randolph would not be the most appropriate treatment option. [Miller] does not need additional treatment for any low back injury caused by his June 2020 motor vehicle accident. He has not sustained any permanent impairment involving his spine due to this accident.

To the extent Johnson challenges the Commission's finding that the back surgery recommended by Dr. Randolph was reasonable and necessary treatment for Miller's compensable

low back injury, and not solely the causal connection between the accident and Miller's low back pain, we find no error.

The Commission is authorized to accept or reject a medical opinion and is authorized to determine its medical soundness and probative value.<sup>9</sup> We defer to the Commission's findings on what testimony it deems credible, and the resolution of conflicting evidence is a question of fact for the Commission.<sup>10</sup> Here, while Dr. Knox and Dr. Bruffett found that low back surgery was not in Miller's best interest, Dr. Randolph advised that it was reasonable and necessary medical treatment. The Commission has the authority to reject the opinion of Dr. Knox and Dr. Bruffett and accept Dr. Randolph's opinion as medically sound.

Prior to Dr. Randolph's surgical recommendation, under the care of Dr. Deimel, Miller underwent more conversative treatment in the form of physical therapy and epidural steroid injections. However, these efforts to obtain permanent relief were unsuccessful. Viewing the evidence in the light most favorable to the Commission's findings, as we must, substantial evidence supports the Commission's finding that the surgical intervention recommended by Dr. Randolph was reasonable and necessary medical treatment for Miller's low back injury.

Moreover, Miller testified that, fifteen days prior to the hearing, he underwent the low back surgery recommended by Dr. Randolph and experienced relief from muscle spasms and pain and was able to sleep for longer periods of time. The Commission found Miller's testimony credible.

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<sup>9</sup>*Poulan Weed Eater v. Marshall*, 79 Ark. App. 129, 84 S.W.3d 878 (2002).

<sup>10</sup>*J.B. Hunt Transp. Servs., Inc.*, 2016 Ark. App. 279, 497 S.W.3d 197.

Consequently, we affirm the Commission's finding that Miller established by a preponderance of the evidence that the low back surgery recommended and ultimately performed by Dr. Randolph was reasonable and necessary medical treatment in connection with his admittedly compensable low back injury.

Affirmed.

KLAPPENBACH and BARRETT, JJ., agree.

*Wright, Lindsey & Jennings LLP*, by: *Lee J. Muldrow* and *Gary D. Marts, Jr.*, for appellants.

*Medlock & Gramlich, LLP*, by: *M. Jered Medlock*, for appellee.