



Greenfield v. Conagra

2007 | Cited 0 times | Court of Appeals of Arkansas | May 30, 2007

NOT DESIGNATED FOR PUBLICATION

Donna Greenfield appeals from the decision of the Workers' Compensation Commission denying additional benefits for surgery to treat her injuries. She challenges the Commission's findings that the treatment was not reasonably necessary in connection with her compensable injury and that the surgery was not authorized because she did not follow the change-of-physician procedures. We affirm the Commission's decision.

Appellant Donna Greenfield sustained admittedly compensable injuries on February 23, 2004, when she stepped down from her stand at ConAgra, slipped on a slick floor, and fell on her right side. Appellant was first seen by the company physician, Dr. Ron Bates, on March 8, 2004. She complained of neck pain, which Dr. Bates diagnosed as cervical strain. An x-ray taken on March 10, 2004, showed "old degenerative disc disease and hypertrophic changes at C5-6 and C6-7" and "reversal of the normal curvature, probably due to muscle spasm." On March 19, 2004, a cervical MRI was performed and interpreted by radiologist Dr. Aubrey Joseph, who found degenerative disc disease. He stated that there did not appear to be effacement of the cord or nerve root encroachment.

When appellant continued to experience neck pain, Dr. Bates referred her to Dr. Scott Schlesinger, a neurosurgeon, who reviewed the MRI and saw appellant on June 7, 2004. He agreed with Dr. Joseph's interpretation of the MRI that there were "degenerative changes at multiple levels, but no evidence of disc herniation, nerve root compression, spinal stenosis, or foraminal stenosis." He opined that her neck and shoulder pain were musculoskeletal and not a consequence of any objective injury to her spine other than musculoskeletal strain. He recommended physical therapy. A second radiologist, Dr. James Zelch, also reviewed the MRI and x-rays and arrived at the same conclusion as Dr. Joseph and Dr. Schlesinger, stating that "the findings at C5-6 and C6-7 represent degenerative disc disease." On June 10, 2004, Dr. Bates prescribed one week of physical therapy, returned appellant to full work duty, and discharged her from his care as he did not "find any objective evidence of injury."

Appellant completed the physical therapy and on June 29, 2004, went to see Dr. Zachary Mason, who had performed surgery on appellant's lumbar spine in 2000 and in 2003. Dr. Mason reviewed appellant's MRI, determined that it revealed a "midline C5-6 disc herniation and spondylosis at C5-6," and recommended surgery. By letter to the Commission dated July 21, 2004, appellant requested a change of physician to Dr. Mason. On August 13, 2003, appellee denied that appellant was entitled to a change of physician. On August 19, 2004, Dr. Mason performed surgery on



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appellant. On September 15, 2004, the Commission's Medical Cost Containment Division denied appellant's petition for change of physician, stating that it was not possible to grant a change because Dr. Mason was already treating appellant. Appellant requested a hearing, which was held on March 23, 2005. The Administrative Law Judge found that appellees had controverted appellant's entitlement to additional medical treatment before appellant's surgery, and therefore that the change-of-physician rules were not applicable, and that appellant was free to seek reasonably necessary medical treatment at appellee's expense. See Ark. Code Ann. § 11-9-514(f) (Repl. 2002). The ALJ then found that, even if the change-of-physician rules applied, appellant had proceeded appropriately and was entitled to change physicians. Finally, the ALJ found that the surgery performed by Dr. Mason was reasonably necessary and ordered appellee to pay for all treatment by Dr. Mason performed after July 21, 2004, the date she filed her change-of physician petition.

On appeal, the Commission reversed the ALJ's decision, concluding that the treatment of appellant by Dr. Mason was not authorized and not the responsibility of appellee because appellant did not petition for a change of physician before going to Dr. Mason for treatment. The Commission also held that the surgery performed by Dr. Mason was not reasonably necessary in connection with appellant's compensable injury. Finally, the Commission found that appellant did petition the Commission for a change of physician and is entitled to a one-time visit to the physician of her choice.

On appeal to this court, appellant argues that the Commission's decision is not supported by substantial evidence because the change-of-physician rules do not apply and the surgery was reasonably necessary for treatment of an injury caused by the admittedly compensable injury. Because we find that the Commission's decision that the surgery performed by Dr. Mason was not reasonably necessary in connection with appellant's injury is supported by substantial evidence, we do not address her argument concerning the change-of-physician rules.

When reviewing the sufficiency of the evidence to support a decision of the Commission, we view the evidence and all reasonable inferences deducible therefrom in the light most favorable to the Commission's findings and will affirm if the Commission's decision is supported by substantial evidence. *Wright v. ABC Air, Inc.*, 44 Ark. App. 5, 864 S.W.2d 871 (1993). Substantial evidence is such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. *Id.* The issue is not whether we might have reached a different result or whether the evidence would have supported a contrary finding; if reasonable minds could reach the Commission's conclusion, we must affirm its decision. *Stafford v. Arkmo Lumber Co.*, 54 Ark. App. 286, 288-289, 925 S.W.2d 170, 171-172 (1996). Moreover, the Commission has the authority to accept or reject medical opinions, and its resolution of the medical evidence has the force and effect of a jury verdict. *Id.* (citing *McClain v. Texaco, Inc.*, 29 Ark. App. 218, 780 S.W.2d 34 (1989)).

Arkansas Code Annotated § 11-9-508(a) (Repl. 2002) requires an employer to provide for an injured employee such medical and surgical services "as may be reasonably necessary in connection with the



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injury received by the employee." The employee has the burden of proving by a preponderance of the evidence that medical treatment is reasonable and necessary. *Stone v. Dollar Gen. Stores*, 91 Ark. App. 260, 209 S.W.3d 445 (2005). It is the province of the Commission to weigh conflicting medical evidence; however, the Commission may not arbitrarily disregard medical evidence or the testimony of any witness. *Id.* The resolution of conflicting evidence is a question of fact for the Commission. *Id.* We defer to the Commission's findings on what testimony it deems to be credible, and it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. *Fayetteville Sch. Dist. v. Kunzelman*, 93 Ark. App. 160, 217 S.W.3d 149 (2005).

The Commission held that, even if appellant had followed the change-of-physician statute and the treatment had been authorized, the surgery performed by Dr. Mason was not reasonably necessary in connection with appellant's compensable injury. The Commission based this determination on the following findings. It found that appellant sustained a cervical strain as a result of her accident. However, the Commission found that appellant did not prove that she sustained an acute injury to a cervical disc that required surgery. The Commission noted that the x-ray taken on March 10, 2004, showed old degenerative disc disease at C5-6 and C6-7 and that a later MRI demonstrated findings consistent with degenerative disc disease at the same place. The Commission then reviewed the findings of each of the doctors who treated appellant. Dr. Bates diagnosed cervical strain, noting no evidence of acute injury, and stated that the x-ray revealed old degenerative disc changes. Dr. Schlesinger determined that there was no evidence of disc herniation, nerve root compression, or spinal stenosis. Dr. Zelch concluded that both the MRI and the x-ray indicated pre-existing degenerative disc disease. Dr. Mason was the only doctor who opined that appellant needed surgery. The Commission found that the opinions of Dr. Bates, Dr. Schlesinger, and Dr. Zelch were entitled to more probative weight than the opinion of Dr. Mason. The Commission also noted appellant's own testimony that she "guessed" she felt better after the surgery, but that she was continuing to have daily problems with her neck. The Commission found that the lack of post-surgical improvement was additional evidence that the surgery was not reasonably necessary.

It is the Commission's duty to weigh the medical evidence and to resolve the conflicting evidence. When we review the Commission's findings, the issue is not whether we might have reached a different result or whether the evidence would have supported a contrary finding; if reasonable minds could reach the Commission's conclusion, we must affirm its decision. *Stafford v. Arkmo Lumber Co.*, 54 Ark. App. 286, 288--89, 925 S.W.2d 170, 171--72 (1996). Viewing the evidence and all reasonable inferences deducible therefrom in the light most favorable to the findings of the Commission, we hold that the Commission's decision that the surgery was not reasonably necessary is supported by substantial evidence.

Affirmed.

PITTMAN, C.J., and GRIFFEN, J., agree.

