DIVISION II

ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
ROBERT J. GLADWIN, JUDGE

CA06-465

FEBRUARY 14, 2007

SHONNA DAVIS
APPELLANT

V.

EASTERN OZARK REGIONAL HEALTH SYSTEM
APPELLEE

APPEAL FROM THE WORKERS' COMPENSATION COMMISSION
[NO. F305141]

AFFIRMED

This appeal follows the February 27, 2006 decision of the Workers' Compensation Commission (Commission) affirming the opinion of the Administrative Law Judge (ALJ) with respect to the grant of appellant's request for a one-time change of physician, but reversing with respect to the ALJ's finding that appellant proved by a preponderance of the evidence that further medical treatment is reasonably necessary as related to her compensable injury. On appeal, appellant argues that the Commission's decision to deny the additional medical treatment is not supported by substantial evidence. We affirm.

On October 31, 2001, appellant was working as a home health aide for appellee. While she was in a patient's home, she placed her left hand in the garbage disposal to remove a washcloth, at which time her hand became stuck. She remained stuck in that position for

approximately one and a half hours. Eventually she called emergency services, and the fire department responded to remove her hand from the disposal. Although appellant claimed that she suffered swelling and bruising from the incident, Assistant Fire Chief Sam Manness testified that he looked at appellant's hand when it was extracted from the garbage disposal and that it did not have any cuts, scratches, or abrasions of any sort, nor did he observe any bruising. However, the following day, appellant sought medical treatment for her hand, and approximately two weeks later, her third, fourth, and fifth fingers began to draw up, such that it looked as if she was making a shooting gesture, and she was unable to straighten her fingers. She underwent a long series of medical evaluations and treatment for her hand. Appellee initially accepted the injury as compensable and paid for numerous evaluations and treatment, including MRI scans, x-rays, and EMG/NCS studies, all of which were normal, from the time of the injury through December 10, 2003.

On December 10, 2003, appellant was seen for the last time by Dr. James Kelly. At that time he opined that her condition was truly psychiatric in nature and that:

> I cannot relate the fact that she had her hand down in a garbage disposal and never actually injured her hand whatsoever and that this all lead [sic] to this.
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> ****
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> I think that at this point that there will be no rating provided for her as what she is suffering from is not related to her work injury and in fact, I do not think there was a work injury whatsoever. I have explained that I think that she needs to pursue this through counseling and that there is no surgical procedure that would be amenable for her benefit and that I do not want to play into what I think is a secondary gain that she is seeking. I therefore will be seeing her back on a prn basis.

It was at that time appellees controverted appellant's need for additional medical treatment.

At the hearing before the ALJ on March 18, 2004, the issues were (1) appellant's request for a one-time change of physician, and (2) appellant's entitlement to additional medical treatment for her left arm and hand. The ALJ found in favor of appellant on both issues, and the Commission subsequently reversed the ALJ's opinion with respect to the request for additional medical treatment. This appeal follows appellant's timely filing of her notice of appeal.

In appeals involving claims for workers' compensation, this court views the evidence in a light most favorable to the Commission's decision and affirms the decision if it is supported by substantial evidence. *Kimbell v. Ass'n of Rehab Indus. & Bus. Companion Prop. & Cas.*, 366 Ark. 297, __ S.W.3d __ (2006). Substantial evidence is evidence that a reasonable mind might accept as adequate to support a conclusion. *Id.* The issue is not whether the appellate court might have reached a different result from the Commission; if reasonable minds could reach the result found by the Commission, the appellate court must affirm the decision. *Id.* Where the Commission denies a claim because of the claimant's failure to meet his burden of proof, the substantial-evidence standard of review requires that we affirm if the Commission's decision displays a substantial basis for the denial of relief. *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. *Dorris v. Townsends of Ark., Inc.*, 93 Ark. App. 208, __ S.W.3d __ (2005).

Appellate courts defer to the Commission on issues involving the weight of evidence and the credibility of witnesses. *Kimbell*, *supra*. However, while the Commission may be insulated to a certain degree, it is not so insulated to render appellate review meaningless. *Kimbell*, *supra*. Likewise, the Commission may not arbitrarily disregard evidence in support of a claim. *Id.*

Questions concerning the credibility of witnesses and the weight to be given to their testimony are within the exclusive province of the Commission. *Patterson v. Ark. Dep't of Health*, 343 Ark. 255, 33 S.W.3d 151 (2000). When there are contradictions in the evidence, it is within the Commission's province to reconcile conflicting evidence and to determine the true facts. *Id.* The Commission is not required to believe the testimony of the claimant or any other witness, but may accept and translate into findings of fact only those portions of the testimony that it deems worthy of belief. *Id.* Thus, we are foreclosed from determining the credibility and weight to be accorded to each witness's testimony. *Arbaugh v. AG Processing, Inc.*, 360 Ark. 491, 202 S.W.3d. 519 (2005). As our law currently stands, the Commission hears workers' compensation claims de novo on the basis before the ALJ pursuant to Ark. Code Ann. § 11-9-704(c)(2), and this court has stated that we defer to the Commission's authority to disregard the testimony of any witness, even a claimant, as not credible. *See Bray v. Int'l Wire Group*, 95 Ark. App. 206, __ S.W.3d __ (2006).

The record in this matter is replete with medical records related to appellant's treatment history. Those records indicate that on or about November 1, 2001, appellant initially sought treatment for swelling and pain in her left hand at the hospital emergency room, where x-rays were taken and her arm was placed in a splint.

On November 29, 2001, appellant was examined by Dr. Brian Dickson for complaints of left-hand stiffness and pain. At that time he assessed a "claw-type deformity" of the left hand, ordered an EMG/NCV, and prescribed physical therapy and the use of a splint. Dr. Terence Braden performed the nerve-conduction study on December 5, 2001, and on December 13, 2001, Dr. Dickson explained to appellant that the flexion of her fingers was a voluntary action. He recommended a psychiatric evaluation. At approximately the same time, appellant was seen at the Orthopaedic Clinic in Memphis where significant maceration of her palm was evidenced but no contractures were noted.

On January 2, 2002, physical therapist Stephanie Teague noted that appellant had achieved no significant progress despite contrast baths, stretching exercises, and ultrasound treatment to the dorsal side of the left hand under water. On January 14, 2002, appellant was examined by hand specialist Dr. Michael Moore and neurologist Reginald Rutherford. Dr. Rutherford reported to Dr. Moore that appellant was experiencing clinched-fist syndrome, a psychophysiologic process, and he recommended an evaluation by neuropsychologist Dr. Judy White Johnson. Dr. Johnson performed the evaluation on January 31, 2002, and reported that appellant was seeking medical attention to alleviate acute distress and that her

overall pattern of functioning was consistent with a somatiform disorder with conversion symptoms and a histrionic personality disorder; however, she made no recommendation for psychological intervention at that time.

On February 1, 2002, Dr. Rutherford saw appellant for follow-up care and indicated that testing clearly revealed that stress was playing a significant role in her problem. He recommended Paxil and normal use of the hand as a course of treatment. When appellant returned on March 1, 2002, Dr. Rutherford indicated that no change had occurred, that appellant's fingers could be manually extended, and there was no evidence of contracture formation or atrophy of hand musculature. He stated that the manual muscle testing was normal and no collapsing weakness was identified. His notes also indicate that appellant was indifferent to her situation at that visit and that the treatment with Paxil was discontinued and switched to Amitriptyline because the Paxil had caused appellant to suffer chest pain. On March 29, 2002, Dr. Rutherford again noted no change in appellant's condition, and he advised her that he had no further treatment to recommend. He noted that clinical follow-up would be on an as needed basis and commented that appellant had a poor prognosis for recovery.

On April 15, 2002, Dr. Charles Varela described appellant's condition as "probable conversion, disorder, left hand," psychoflexed hand, wherein the ulnar three digits are severely flexion contractured, which often causes maceration in the palm, and is a condition almost impossible to correct. He noted that there was no anatomical or physiological reason

for the condition, and that it appeared to be primarily a subconscious disorder. He informed appellant that sometimes some correction can be seen with hypnosis or self-hypnosis. Appellant saw psychiatrist Dr. Thomas Zorkowski on June 12, 2002, for a psychiatric evaluation. Dr. Zorkowski unsuccessfully attempted hypnosis and stated that he did not believe the condition was of a psychological etiology, but noted that "it may be." He recommended an evaluation with an orthopedist or neurologist. Additionally, appellant met with Patrecia Goldey, a licensed counselor, on September 5, 2002. Ms Goldey also reported that appellant had no symptoms of mental illness at that time.

Appellant was next examined by Dr. Thomas Joseph, at Orthopedics of Pocahontas, on October 2, 2002, at which time he ordered an MRI of her left extremity. Two days later, Dr. Joseph indicated that the results of appellant's nerve conduction studies were normal. On January 17, 2003, Dr. Joseph reported that the MRI scan of appellant's left forearm did not show any muscle pathology or contracture.

On March 7, 2003, appellant was examined by Dr. Charles Goldfarb at Washington University School of Medicine Orthopaedic Surgery Department in St. Louis, Missouri. He opined that she was suffering from "psychogenic flexed posture of the long, ring, and small finger," and subsequently performed Botox injections in the flexor digitorum superficialis and flexor digitorum profundus on May 12, 2003. She returned to Dr. Goldfarb on May 19, 2003, for a follow-up visit, and he noted that she was experiencing no pain and her fingers were straight.

During the period between May 5, 2003, and June 16, 2003, appellant underwent extensive physical therapy for continuing hand complaints, but therapy was discontinued due to a lack of progress and the possibility of impending surgery. Appellant was experiencing pain in her left hand, as well as edema of the long and ring fingers, serious drainage, and a sweaty palm. The discharge notes from June 20, 2003, stated that appellant could "accomplish full PROM and would shake uncontrollably when trying to activate ROM."

On June 13, 2003, appellant returned to Dr. Goldfarb for follow-up treatment, at which time her fingers had begun "drawing back up" unexplainably. Dr. Goldfarb recommended an evaluation by Brad Racette at Neurology Disorders Clinic for potential reinjection or profundus to superficialis transfer.

Appellant was examined by Dr. Kelly at Plastic and Reconstructive Surgery Hand and Microsurgery on September 22, 2003. He recommended an "axillary block on left upper extremity and the manipulation of the third, fourth, and fifth MCP, PIP, and DIP joints, followed by a proper EMG/NCV study to rule out the possibility of ulnar nerve neuropathy at the wrist or distal forearm which would give her a quasy [sic] ulnar clenched hand syndrome." Appellant treated with him on October 7, 2003, at which time the manipulation was performed, and on October 13, 2003, Dr. Kelly released her to return to alternative work duty effective as of the following day. She returned to Dr. Kelly for a follow-up visit on October 20, 2003, at which time he removed the splint and directed appellant to obtain counseling and to start range of motion therapy. He also continued her one-hand-work duty

restrictions. During her November 17, 2003 appointment with Dr. Kelly, appellant was able to flex her fingers and extend her muscles with coaxing and firm instructions. At that time, he assessed a functional disorder consistent with somatoform disorder with conversion symptoms with a history of a personality disorder. During their last appointment on December 10, 2003, Dr. Kelly noted that appellant started to have voluntary contractures of the shoulder and opined that the symptoms were truly psychiatric in nature and not related to the "work injury." He formally pronounced maximum medical improvement and assessed a zero percent impairment rating.

On December 17, 2003, Mr. Greg Brooks, the executive director of Better Life Counseling Center in Jonesboro, diagnosed appellant with an "adjustment disorder unspecified, chronic, with identifiable stressors being her continued physical complaints and the failure of treatment for those complaints up to this point." This appears to be the most recent diagnosis that was presented to the Commission.

Appellant argues that Dr. Kelly failed to perform another EMG/NCV that he ordered on September 22, 2003, because he felt her previous one was not good because her fingers were clenched instead of fully extended. She points to testimony from registered nurse Leigh Ann Schmidt that it would have been proper to follow up and make sure the test was performed before appellant was discharged. She also contends that Dr. Kelly, as a plastic and reconstructive specialist, was not qualified to make a diagnosis that her problem was psychiatric in nature. Further, she notes inconsistencies in his statements that her shoulder

spasms were of her own making when therapy notes indicated as late as December 5, 2003, that she was suffering from non-volitional spasms.

There is substantial evidence to support the decision of the Commission regarding appellant's request for additional medical treatment. The Commission determined that the wealth of physicians and other health professionals that have treated appellant were credible, with the exceptions of Dr. Zorkowski and Ms. Goldey, and that their various reports do not support the need for additional medical treatment. The Commission had all the records before them, including evidence related to appellant's psychiatric condition, and based on that information, the Commission rejected any contention that further treatment was reasonable or necessary with respect to the October 31, 2001 incident, as it was entitled to do through its authority to accept or reject medical opinions. *Bray*, *supra*.

The Commission stated in its majority opinion that it was "constrained to find that [appellant's] need for additional treatment due to her [']clenched left hand['] results from a psychological etiology rather than her compensable injury of October 31, 2001." We specifically note that based upon our review, the record is void of any medical evidence establishing any causal connection whatsoever between the psychological etiology of appellant's clenched left hand with the October 31, 2001 incident.

The medical records indicate that appellant received appropriate care for her initial injury, and they provide a substantial basis for the Commission's opinion that the additional

treatment sought is neither reasonable and necessary nor causally related to the October 31, 2001 injury. Accordingly, we affirm.

Affirmed.

BIRD and BAKER, JJ., agree.