ARKANSAS COURT OF APPEALS
NOT DESIGNATED FOR PUBLICATION
SAM BIRD, JUDGE

DIVISION I

CA06-923

FEBRUARY 28, 2007

GEORGIA-PACIFIC CORPORATION AND SEDGWICK CLAIMS MANAGEMENT SERVICES APPELLANTS	APPEAL FROM THE WORKERS' COMPENSATION COMMISSION, [F500920]
V.	
DARRELL HUMPHREY APPELLEE	AFFIRMED

Georgia-Pacific Corp. appeals a decision of the Workers' Compensation Commission finding that appellee Darrell Humphrey had proven the compensability of an injury he sustained to his right shoulder on November 25, 2004. The decision held Georgia-Pacific liable for related medical expenses and for temporary total benefits from February 28, 2005 until June 5, 2005. Georgia-Pacific raises one point on appeal, challenging the Commission's finding that Humphrey sustained a compensable injury on November 25, 2004. We hold that the Commission's determination is supported by substantial evidence; therefore, the decision is affirmed.

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Georgia-Pacific contends on appeal that Humphrey "cannot prove by a preponderance of the evidence that he sustained a compensable shoulder injury on November 25, 2004." We remind Georgia-Pacific that, although the claimant has the burden of proving to the Commission by a preponderance of the evidence that his claim is compensable, where the sufficiency of the evidence is challenged on appeal we must review the evidence in the light most favorable to the findings of the Commission and will affirm if those findings are supported by substantial evidence. *Cooper Tire & Rubber Co. v. Angell*, 75 Ark. App. 325, 58 S.W.3d 396 (2001); *Ringier America v. Combs*, 41 Ark. App. 47, 849 S.W.2d 1 (1993). Substantial evidence is relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Wheeler Constr. Co. v. Armstrong*, 73 Ark. App. 146, 41 S.W.3d 822 (2001). We also remind Georgia-Pacific that determinations of credibility and the weight to be given a witness's testimony fall within the sole province of the Commission. *Powers v. City of Fayetteville*, ___ Ark. App. ___, ___ S.W.3d ___ (Jan. 31, 2007).

Georgia-Pacific argues that Humphrey's lay testimony that he suffered a bruised shoulder did not fulfil our statutory requirement of establishing a compensable injury by medical evidence supported by objective findings. It also argues that Humphrey's shoulder

condition resulted from an independent intervening non-work-related injury on December 10, 2004.

A "compensable injury" includes an accidental injury causing internal or external physical harm to the body, "arising out of and in the course of employment and which requires medical services or results in disability or death." Ark. Code Ann. § 11-9-102(4)(A)(i) (Supp. 2005). An injury is "accidental" only if it is caused by a specific incident and is identifiable by time and place of occurrence. *Id.* A compensable injury must be established by medical evidence supported by objective findings. Ark. Code Ann. § 11-9-102(5). Although necessary to establish the existence and extent of an injury, objective medical evidence is not essential to establish the causal relationship between the injury and a work-related accident. *Wal-Mart Stores, Inc. v. VanWagner*, 337 Ark. 443, 990 S.W.2d 522 (1999).

The evidence in the present case included testimony by Humphrey, testimony by his co-workers and supervisors, testimony by Dr. Scott Bowen, medical records related to Humphrey's hip and shoulder surgeries, and company videotapes that depicted job duties and equipment in use at the time of Humphrey's injury. This evidence, reviewed in the light most favorable to the findings of the Commission, is as follows.

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Humphrey testified that he normally worked as a truck driver in Georgia Pacific's finishing and shipping department, where he drove a "roll clamp truck," picking up rolls from a chain, rotating them, and taking them to storage. During Thanksgiving week in 2004, before undergoing a scheduled hip surgery on December 8, he filled in for another employee as a "roll wrapper operator" on a "monstrous piece of equipment." On November 25, he went into the pit to change a fifty-four-inch roll of paper, standing with his feet on separate I-beams about a foot high and eighteen inches apart. He lost his balance and, partly because of his hurting hip, could not catch himself. He fell backward across other I-beams, hitting his lower back, right shoulder, and head. His only pain was in his shoulder, although "it sounded like a bomb went off" when he hit his head.

A supervisor helped him make out an accident report, but no one witnessed the fall. Humphrey reported that his shoulder really hurt but probably was just a bad bruise. He did not feel that he needed immediate medical treatment, and he finished the six or seven hours remaining on his shift and worked the next day. On the long weekend he drove to Fayetteville to pick up his wife but had to stop four or five times to rest his arm because it was hurting. On Tuesday night he resumed his regular job as truck driver. He was able to operate the levers and controls on the truck's panel with his right hand, using very little

movement and almost as if he were playing a piano; all the steering was with his left hand. He was having trouble raising his arm but still thought that he just had a bad bruise.

Humphrey underwent his scheduled hip surgery by Dr. Scott Bowen on December 8, 2004. In the hospital he told Dr. Bowen about his shoulder problems, reporting that his hip was not hurting from surgery but that his shoulder hurt. He could not sleep, and he needed the pain medication prescribed by Dr. Bowen for his shoulder rather than his hip. Humphrey asked for the medication in the hospital because it was the first time that he "was in a place where it was available that [he] could ask for it and . . . needed it," and he told Dr. Bowen about the incident at work.

The night after his surgery, in an incident described by Humphrey as sleepwalking or being groggy from morphine, he managed to get out of bed and walk out the door of his hospital room. He realized what was happening, felt a bit woozy, grabbed a handrail on his left, twisted his body to stay off his right hip, and eased himself down to the floor with his left hand, "half-sitting up." He denied doing anything to his shoulder when he went down, and he testified that his shoulder was hurting from the time he woke up from hip surgery.

Dr. Bowen had recommended the hip surgery in August or September, and Humphrey admitted under cross-examination that he was frustrated because, under Georgia-Pacific's

contract with Blue Cross, he endured pain while the surgery was delayed until December. Further, he was unhappy with Blue Cross because he could not receive physical therapy where the doctor wanted him to go. Humphrey also admitted having "a departmental issue" with Georgia-Pacific about maintenance on the trucks that he drove, which had resulted in getting his foot run over. He testified that he said nothing to Georgia-Pacific about medical care for his right shoulder until after he got out of the hospital for his hip surgery. Humphrey testified that both his hip surgery and shoulder surgery went well and that, despite his right shoulder being a little weak, he went back to work on June 5 performing his regular job as roll clamp truck driver.

A Georgia-Pacific incident report dated November 25, 2004, indicates that Humphrey hit his right shoulder and the back of his head in a fall, injuring his right arm and shoulder and suffering a "bruise/contusion." The report was signed by Humphrey and his shift supervisor, Tommy McDougald. McDougald testified that he would have sent Humphrey to the doctor if it had been requested. Bobby McAdams, who was working on the day of the incident, testified that Humphrey said he was a little sore in his shoulder but performed his job without difficulty. Edie Mack Murphy, a shipping supervisor, testified that Humphrey said his arm was sore after the long weekend but did not ask to see a doctor.

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Orthopedic surgeon Dr. Scott Bowen performed Humphrey's hip surgery on December 8, 2004. In the hospital discharge summary of December 13, Dr. Bowen noted Humphrey's complaints of shoulder pain in bed. Bowen testified that an MRI performed on December 15, 2004, revealed "significant full thickness rotator cuff tear involving two of the four rotator cuff tendons" and a "so-called partial tear of the subscapularis." He recommended conservative treatment while Humphrey was recovering from hip surgery. Because the injury was in Humphrey's dominant arm and because of his occupation, Bowen performed rotator-cuff surgery on February 28, 2005.

Dr. Bowen testified that Humphrey told him about the Thanksgiving fall at work and that the rotator-cuff injury could be consistent with either the fall or the hospital incident. He opined that, after the fall at work, Humphrey probably could have worked manual and foot controls at work but that overhead activities would have been difficult.

The Commission noted that Humphrey continued to work while awaiting hip surgery. Characterizing him as a physically large man and a motivated employee with a high pain threshold, the Commission found Humphrey to be a credible witness who had met his burden of proof. The Commission's opinion stated: "There is no dispute that the claimant fell at work, bruising his shoulder, an objective indicator of injury. He complained of soreness as

verified by his supervisors. The lay testimony established the compensability of the claim."

In a workers' compensation case, the claimant has the burden of proving by a preponderance of the evidence that his claim is compensable, *i.e.*, that his injury was the result of an accident that arose in the course of his employment, and that it grew out of or resulted from the employment; when the sufficiency of the evidence is challenged on appeal, however, we will affirm if the Commission's findings are supported by substantial evidence. *Ringier America*, *supra*.

As the claimant, appellee had the burden of proving a compensable injury by a preponderance of the evidence. Ark. Code Ann. § 11-9-102(4)(E)(i) (Repl. 2002). A "compensable injury" is one "arising out of and in the course of employment." Ark. Code Ann. § 11-9-102(4)(A)(i) (Repl. 2002). In order to prove a compensable injury the claimant must prove, among other things, a causal relationship between his employment and the injury. *Wal-Mart Stores, Inc. v. Westbrook*, 77 Ark. App. 167, 72 S.W.3d 889 (2002). Although a compensable injury must be established by medical evidence supported by objective findings, medical evidence is not required to prove that the cause of an injury was work-related. Ark. Code Ann. § 11-9-102(4)(D)*; Wal-Mart Stores, Inc. v. VanWagner*, *supra*.

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Georgia-Pacific contends on appeal, as it did below, that Humphrey presented no objective medical finding that he sustained a compensable injury on November 25, 2004, and that his disability and need for treatment resulted from his independent intervening non-work-related injury in the hospital on December 10, 2004. Georgia-Pacific asserts that the Commission incorrectly found objective medical evidence establishing the compensability of this claim, where "the only evidence presented was [Humphrey's] subjective non-medical testimony of soreness and bruising along with mere regurgitation of [his] subjective complaints by his non-medically trained co-workers." According to Georgia-Pacific, this narration of events lacks credibility and under Arkansas law cannot form the basis for a finding of compensability. Georgia-Pacific also asserts that Dr. Bowen's testimony fails to establish that Humphrey sustained a compensable injury on November 25, 2004.

First of all, we recognize that it is the Commission's function to determine the weight to be afforded to the testimony and medical evidence. *Searcy Indus. Laundry, Inc. v. Ferren*, 82 Ark. App. 69, 110 S.W.3d 306 (2003). Thus, any argument based on the credibility of witnesses in this case is improperly raised, and we will not address it.

In making its findings and conclusions, the Commission focused on the requirement that a claimant must prove that the injury sustained was the result of an accident arising out

of and in the course of his employment. "Arising out of the employment" refers to the origin or cause of the accident; and "in the course of employment" refers to the time, place and circumstances under which the injury occurred. *Gerber Prods. v. McDonald*, 15 Ark. App. 226, 229, 691 S.W.2d 879, 880 (1985).

The Commission clearly found the lay testimony of Humphrey and his co-workers sufficient to establish the requirement of work-relatedness. We hold that Humphrey's testimony that he injured his shoulder at work on November 25, 2004, which the Commission found to be credible, was sufficient evidence to establish a causal relationship between the work-related incident and the rotator-cuff injury. It was not necessary that medical evidence establish this causation.

We reject the arguments of Georgia-Pacific regarding the lack of objective medical evidence. In addition to finding that lay testimony established the compensability of this claim, the Commission set forth objective findings that supported the medical evidence. The Commission noted Humphrey's diagnosis of a severe rotator- cuff injury. It reviewed medical testimony and records that the right-shoulder rotator-cuff tear was shown by an MRI scan of December 15, 2004 and that Dr. Bowen performed rotator-cuff surgery of the shoulder on February 28, 2005. Therefore, there was medical evidence supported by

objective findings to satisfy the existence and extent of the shoulder injury, as is required by Ark. Code Ann. § 11-9-102(5).

Georgia-Pacific also argues that, because Humphrey did not establish a compensable injury, he is not entitled to medical expenses or temporary total disability benefits. In light of our finding that the claim is compensable, this argument is moot.

Regarding temporary total disability benefits, Georgia-Pacific further asserts that Humphrey failed to establish that he was in a healing period and incapacitated from earning wages from February 28, 2005 to June 5, 2005. In order to be entitled to temporary total disability benefits, an injured employee must prove that he remained within his healing period and that he suffered a total incapacity to earn wages. *Palazzolo v. Nelms Chevrolet*, 46 Ark. App. 130, 877 S.W.2d 938 (1994). The healing period is that period for healing of the injury which continues until the employee is as far restored as the permanent character of the injury will permit. *Breakfield v. In & Out, Inc.*, 79 Ark. App. 402, 88 S.W.3d 861 (2002). The healing period has not ended so long as treatment is administered for the healing and alleviation of the condition. *Id.* These are matters of weight and credibility, and thus they lie within the exclusive province of the Commission. *Searcy Indus. Laundry, Inc. v. Ferren*, *supra*.

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Georgia-Pacific fails to acknowledge that evidence was indeed presented on the issue of temporary total disability. Letters written by Dr. Bowen between January 25 and May 19, 2005 address the issue, and Humphrey testified that he went back to his regular work on June 5, 2005. Dr. Bowen wrote on January 25 that Humphrey was "not able to return to work" because a three-month period was needed for recovery from hip surgery and because of the additional impediment of his rotator-cuff tear. On March 9, eight days after the rotator-cuff surgery, Dr. Bowen ordered that Humphrey should not reach, lift, push, or pull anything with the right arm for the next month. A letter of April 7 stated that Humphrey was to continue physical therapy for six weeks and that he was "[a]t this time, . . . out of work." Dr. Bowen stated in a letter of May 19, "We will extend his disability through June 4." Thus, there was substantial evidence to support the Commission's finding that Humphrey was entitled to temporary total benefits from February 28, 2005 until June 5, 2005.

Affirmed.

PITTMAN, C.J., and HART, J., agree.