

NOTICE

Decision filed 10/31/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2011 Il App (1st) 102591WC-U

Workers' Compensation
Commission Division
Filed: October 31, 2011

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

No. 1-10-2591WC

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

RANDALL TAYLOR,)	APPEAL FROM THE CIRCUIT
)	COURT OF COOK COUNTY
Appellant,)	
)	
v.)	No. 09 L 50966
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, <i>et al.</i> ,)	
(TALCO ENTERPRISES, INC., and)	
OLYMPIC PARTNERS, LLC,)	HONORABLE
)	ELMER JAMES TOLMAIRE, III,
Appellees).)	JUDGE PRESIDING.
)	

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice McCullough and Justices Hudson, Holdridge and Stewart concurred in the judgment.

ORDER

HELD: The finding of the Illinois Workers' Compensation Commission that the condition of ill-being of the claimant's back is not causally related to his employment-related accident is neither against the manifest weight of the evidence nor contrary to law.

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¶ 1 The claimant, Randall Taylor, appeals from an order of the Circuit Court of Cook County which confirmed a decision of the Illinois Workers' Compensation (Commission) denying him benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2004)) for the current condition of his back. For the reasons which follow, we affirm the judgment of the circuit court.

¶ 2 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on May 30 and August 1, 2008.

¶ 3 In December 2004, the claimant was employed by Talco Enterprises, Inc. (Talco), and his duties included processing and calculating payroll and assisting the accounting department. Though his work was primarily sedentary, he sometimes performed odd jobs around the office. On December 29, 2004, the claimant was directed to assist his coworker, Mike Amir, in moving some printers into a storage room, a distance of approximately 150 feet. Amir stacked two printers, which weighed approximately 100 pounds each, on a wheeled dolly and pushed it toward the new location while the claimant walked in front of the dolly and acted as a "spotter." When Amir set the dolly down, the stacked printers shifted, and one of them struck the claimant in the left knee. The printer did not fall off of the dolly, nor did it fall onto the claimant's leg. At the hearing, the claimant testified that the impact of the printer caused him to twist around and fall to the floor. However, Amir contradicted this assertion and testified that the claimant did not fall to the floor.

¶ 4 The claimant also testified that he immediately felt an intense, sharp pain in his left leg, which was shooting from his hip and lower buttocks, down his leg and that, after he got up from the floor, he sat in a chair for several minutes. He then informed his supervisor of the accident, went home for lunch, and put ice on his left leg for about 1 ½ hours. When he returned to work later that afternoon, he was told to go to the hospital if he was still experiencing pain the next day.

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¶ 5 The following morning, the claimant went to the emergency room at Glenbrook Hospital. The emergency room records indicate that the claimant complained of pain in his left knee after it was hyperextended when he dropped a printer on it, but there was no audible pop. He denied falling on his knee. He did not report falling or twisting his back, nor did he report any pain radiating down his leg. The claimant complained of pain with pressure and mild limping. He was diagnosed with a sprain of the knee and collateral ligaments. He was prescribed Ibuprofen and directed to use a knee-immobilizer brace and crutches. The emergency room staff referred him to Dr. Lawrence B. Metrick for further treatment if his symptoms persisted.

¶ 6 The claimant saw Dr. Metrick on January 5, 2005, and reported that the impact with the printer bent his knee back, but he did not report falling or twisting his back. The claimant had pain, discomfort, swelling and some discoloration of his left knee, but he did not report any radiating pain or pain down his leg. He complained of being unable to bend and or bear weight on his knee. Dr. Metrick prescribed pain medication and ordered an MRI of the claimant's left knee, which was performed five days later and revealed a mild distal patellar tendinosis without tear. When he next saw Dr. Metrick, on January 10, 2005, the claimant had mild tenderness of the quadriceps tendon. Dr. Metrick observed minimal-to-mild residual swelling and some decrease in motion, secondary to discomfort. The claimant did not report any radiating pain or pain down his leg. Dr. Metrick ordered an ultrasound examination and prescribed physical therapy, as well as additional pain medication. He also instructed the claimant to continue using the knee-immobilizer brace. After participating in physical therapy, the claimant returned to Dr. Metrick on January 25, 2005, and demonstrated an increased range of motion, but stated that he continued to suffer from severe pain. Dr. Metrick prescribed a different pain medication and also imposed work restrictions limiting the claimant to working four hours per day for one week and then increasing to six hours per day the following week.

¶ 7 The claimant continued to treat with Dr. Metrick and received two successive steroid

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injections in his left knee, but the injections did not relieve the pain in his left leg. On March 16, 2005, Dr. Charu Nagar performed an EMG, which indicated chronic lumbar radiculopathy at the left L3-L4, L4-L5 and right L2-L4. In April 2005, he underwent an MRI of the lumbar spine, and Dr. Eldin Karaikovic diagnosed a small, left lateral disc herniation at L4-5 and a small-to-moderate sized left paracentral disc herniation at L5-S1 as the cause of the left-leg pain. A subsequent MRI indicated that these conditions were unchanged. In May 2005, the claimant was referred to Dr. James A. Hill, who found that the claimant had no inherent knee pathology but diagnosed a complex regional pain syndrome with a lumbar radiculopathy.

¶ 8 Dr. Metrick referred the claimant to Dr. Thomas H. Hudgins, who diagnosed lumbosacral stenosis and administered two successive epidural steroid injections. After each injection, the claimant experienced temporary relief from the pain in his left leg, but the pain returned within one to two weeks. In June 2005, Dr. Hudgins diagnosed lumbosacral radiculopathy, secondary to herniated nucleus pulposus, and prescribed continued physical therapy and spine-stabilization exercises, and he released the claimant to return to work with no restrictions.

¶ 9 Based on a referral by Dr. Hudgins, the claimant saw Dr. David E. Shapiro on November 15, 2005. At that time, Dr. David Shapiro confirmed the previous MRI results, indicating a disc herniation at left L5-S1, and recommended surgical intervention. On December 5, 2005, the claimant underwent a laminectomy and microdiscectomy at the L4-L5 and L5-S1 levels, respectively. Following this surgery, the claimant experienced immediate relief from the pain in his left leg, and Dr. David Shapiro recommended physical therapy, with emphasis on spinal stabilization and abdominal strengthening. The claimant returned to work for approximately eight months, but he again began experiencing pain in August 2006. He returned to Dr. David Shapiro in October 2006 and underwent x-rays and an MRI of his lumbar spine, which confirmed a degeneration and narrowing at the L5-S1 level, as well as a mild, left-lateral recess stenosis, enhancement of the left S1 nerve root, and a mild, right and moderate left

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neuroforaminal stenosis.

¶ 10 The claimant next saw Dr. David Shapiro on November 10, 2006, and complained of severe low-back and left-leg pain, radiating down to his big toe, and numbness and tingling on the lateral four toes of the foot. Dr. David Shapiro recommended a second surgery consisting of a lumbar spinal fusion, but the claimant indicated that he preferred to pursue other treatment options.

¶ 11 In December 2006, Dr. David Shapiro referred the claimant to his partner, Dr. Gary Shapiro, who opined that surgery was required to treat the claimant's left-leg pain. On January 5, 2007, Dr. Gary Shapiro performed a revision of the previous laminectomy and microdiscectomy at the L4-L5 and L5-S1 levels. Following this procedure, the claimant reported that his leg pain had been completely resolved, but he was experiencing severe low-back pain. Dr. Gary Shapiro initially recommended physical therapy and later suggested spinal fusion surgery if the claimant's significant back pain persisted.

¶ 12 The claimant saw Dr. David Shapiro in March 2007, and complained of severe leg and back pain. Dr. David Shapiro determined that the laminectomy and discectomy surgeries performed by Dr. Gary Shapiro in January were unsuccessful. An MRI of the claimant's lumbar spine indicated no evidence of recurrent herniation, but did reflect a dislocated facet joint at L5-S1. On April 30, 2007, Dr. David Shapiro performed lumbar spinal fusion surgery at L5-S1. Two days later, he performed an anterior and posterior lumbar discectomy and fusion at L4-L5. Within three weeks of those surgeries, the claimant complained of swelling and pain in his left leg and ankle, a pinching pain in his left calf, and difficulty sleeping and walking. A subsequent venous Doppler test was negative, and an examination by Dr. John F. Golan revealed no vascular etiology for the pain described by the claimant.

¶ 13 When the claimant saw Dr. David Shapiro on June 12, 2007, he reported that his low-back pain was improved, but he continued to experience radiating leg pain. Dr. David Shapiro

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noted significant tenderness to palpation of both sacroiliac joints, and he referred the claimant to Dr. Ira Goodman for S1 joint injections and consultation on pain management. During the summer of 2007, the claimant was under the care of Dr. Goodman, who administered four successive joint injections and prescribed additional medications to address the claimant's complaints of low-back pain and suboccipital headaches.

¶ 14 In October 2007, the claimant again returned to Dr. David Shapiro and underwent an MRI of his lumbar spine, which revealed an interval operative change and laminectomy defect at L4 and L5 and a left paracentral protrusion extending into the left neural foramen. The claimant was then referred for a neurological evaluation, which suggested S1 radiculopathy. An EMG performed in January 2008 also revealed a chronic left S1 radiculopathy, as well as irritability in the lumbar spine, which was likely related to multiple lumbar surgeries. The claimant again saw Dr. David Shapiro in February 2008 and complained of numbness at the bottom of his foot and increasing pain that radiated to his groin, shin, and calf. Upon viewing x-rays that indicated a non-union of the posterior surgical fusion, Dr. David Shapiro took the claimant off work and recommended that he undergo a revision of the previous lumbar spinal fusion with reinstrumentation.

¶ 15 At his evidence deposition, Dr. David Shapiro testified that herniation on either the left or right side often results in leg pain on the same side as the herniation. He further stated that a sudden motion can cause a herniated disc to form in a person with preexisting degenerations or it can cause exacerbation of a condition where a herniated disc previously existed but was asymptomatic. Dr. David Shapiro testified that, in his professional opinion, the claimant's disc herniation, which resulted in surgical intervention, was related to the December 2004 employment accident. This conclusion was premised on the following three criteria: (1) a reasonable and realistic onset of the claimant's symptoms, relative to the injury, (2) a definitive diagnosis, and (3) sufficient trauma at the time of the accident to cause the claimant's condition.

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In addition, Dr. David Shapiro testified that the initial surgery and post-operative physical therapy were causally related to the employment accident because all of the prior treatments had failed to alleviate the claimant's left-leg pain, which was resolved after the surgical intervention on his back. Also, considering the rate of recurrence of herniation, the claimant's multiple subsequent surgeries were causally related to the accident. Dr. David Shapiro expressed his opinion that the claimant's current disc herniation was related to the original herniation because it occurred at the same level. Dr. Shapiro further testified that his causation opinion was predicated on his conclusion that the immediate onset of knee pain at the time of the accident was caused by a herniation or aggravation of a herniation in the claimant's back. According to Dr. David Shapiro, the claimant's left lower-extremity pain was consistent with a herniation at L4-L5 and L5-S1.

¶ 16 At Talco's request, Dr. Jay L. Levin examined the claimant on April 21, 2005, and July 16, 2007. After reviewing records of the claimant's prior examinations, diagnostic studies, and treatments, Dr. Levin prepared detailed, written reports of his findings from both examinations, and he wrote an additional report in February 2008. Dr. Levin testified at his evidence deposition that the medical findings relating to the claimant's left knee demonstrated that he suffered a left-knee contusion that was causally connected to the employment accident, but those medical findings did not account for any of the claimant's current complaints. According to Dr. Levin, the claimant had reached maximum medical improvement (MMI) for the left-knee injury, and all of his complaints relating to his left leg were fully resolved as of August 2005.

¶ 17 With regard to the condition of ill-being in the claimant's back, Dr. Levin concluded that the degenerative disc changes were not related to the December 2004 employment accident because the claimant did not report any back pain until March 2005. In addition, the claimant was diagnosed in early March 2005 with chronic degenerative changes that, in Levin's professional opinion, could not have resulted from an accident that occurred in late December

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2004 because a trauma cannot cause chronic degenerative disc changes. Though he acknowledged that a trauma could result in a herniation and that a fall on the back or buttocks could cause either a herniation or aggravation of a herniated disc, Dr. Levin testified that the chronic changes noted in the claimant's lumbar spine were inconsistent with an event occurring three months earlier. In support of this conclusion, Dr. Levin explained that, even accepting the claimant's assertion that he fell to the floor and landed on his back or buttocks, the diagnostic studies did not demonstrate any displacement of the S1 nerve root, and the findings noted in the claimant's EMG studies are not related to the L5-S1 disc herniation.

¶ 18 Dr. Levin denied that it was common for a person to begin experiencing symptoms or back pain two to six months after suffering an accidental injury. He further testified that, in his experience and in his professional opinion, a person cannot be asymptomatic with regard to a certain part of his body, with no history of complaints, and then subsequently develop a condition that is causally related to an earlier event. He also stated that the claimant did not have chronic regional pain syndrome and that he was expressing symptom magnification because the objective findings did not support his subjective complaints. Dr. Levin explained that, because the March 2005 EMG does not reveal an S1 radiculopathy, a herniated disc at L5-S1 is not a competent cause of the claimant's left-leg pain. According to Dr. Levin, if the L5-S1 herniation was the cause of that pain, the EMG would have shown radiculopathy at S1, rather than at L3, L4, or L5. Dr. Levin concluded that the current condition of ill-being in the claimant's back was not causally related to the December 2004 employment incident.

¶ 19 Following the hearing which was held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2008)), the arbitrator found that the claimant had sustained a work-related injury to his left knee on December 29, 2004, and that, because he had been paid his regular salary from the date of the accident through February 28, 2005, he was entitled to 6 2/7 weeks of TTD benefits and medical expenses for the knee injury. However, the arbitrator determined that

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the evidence presented at the hearing did not establish that the claimant had suffered an injury to his back as a result of the December 2004 employment accident. The arbitrator noted that the expert medical evidence was conflicting in that Dr. David Shapiro opined that the claimant's back condition was related to his employment accident, but Dr. Levin opined that the back condition was not causally connected to the work-related accident. The arbitrator found that two of the three criteria underlying Dr. Shapiro's opinion were not supported by the medical records and other evidence presented at the hearing. In particular, the arbitrator determined that the first criterion, a reasonable and realistic onset of the claimant's symptoms relative to the injury, was unsupported because the treatment records reflected that the claimant did not initially report any pain to his back or radiating down his leg; rather, he only reported pain to his knee consistent with a contusion.

¶ 20 The arbitrator also found that the third criterion, sufficient trauma at the time of accident to cause the claimant's condition, was unsupported because Dr. Shapiro had relied on the nature of the trauma that was described by the claimant three months after the accident, rather than the description given immediately after the incident occurred. In addition, Dr. Shapiro admitted that the trauma of a printer dropping on the claimant's knee would not cause a disc to herniate or cause an exacerbation of a herniated disc, and he acknowledged that some twisting or violent forward or backward motion was necessary as a causative factor. The arbitrator determined that the claimant's assertion that the printer fell and knocked him to the floor, causing him to twist his back, was not reported by the claimant when he was initially treated, nor was it supported by the other evidence in the record. In light of these circumstances, the arbitrator concluded that Dr. Shapiro's opinion was based on faulty assumptions and, therefore, was not credible and was not entitled to any weight. Because Dr. Shapiro's opinion was the only evidence of a causal connection between the December 2004 employment accident and the condition of ill-being in the claimant's back, the arbitrator concluded that the claimant failed to satisfy his burden of

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proof and was not entitled to additional benefits under the Act for his back condition.

¶ 21 The claimant sought a review of the arbitrator's decision before the Commission. The Commission unanimously affirmed and adopted the arbitrator's decision and remanded the cause back to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 22 The claimant filed a petition for judicial review of the Commission's decision in the Circuit Court of Cook County. The circuit court confirmed the Commission's decision, and this appeal followed.

¶ 23 On appeal, the claimant argues that the Commission erred in concluding that he failed to prove that the current condition of ill-being in his lower back arose out of and in the course of his employment with Talco. In essence, the claimant argues that the Commission's decision must be reversed because the medical evidence in the record compels the conclusion that his back condition resulted from the December 2004 employment accident, despite competent expert testimony to the contrary. We disagree.

¶ 24 A claimant has the burden of proving by a preponderance of the evidence that his injury arose out of and in the course of the employment. 820 ILCS 305/2 (West 2008); *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665 (2003). The "arising out of" component addresses the causal connection between a work-related injury and the claimant's condition of ill-being. *Sisbro Inc.*, 207 Ill. 2d at 203. On appeal, a reviewing court must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn, nor should a court substitute its judgment for that of the Commission unless the Commission's findings are against the manifest weight of the evidence. *Sisbro, Inc.*, 207 Ill. 2d at 206. Whether an injury arose out of and in the course of a claimant's employment is a question of fact to be resolved by the Commission. *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910, 851 N.E.2d 72 (2006). In resolving questions of fact, it is

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the function of the Commission to judge the credibility of the witnesses and resolve conflicting evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221 (1980). A factual finding by the Commission will not be set aside on review unless it is against the manifest weight of the evidence. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44, 509 N.E.2d 1005 (1987); *University of Illinois*, 365 Ill. App. 3d at 910. For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *University of Illinois*, 365 Ill. App. 3d at 910. Where the Commission's decision is supported by competent evidence, its finding of fact is not against the manifest weight of the evidence. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450, 440 N.E.2d 90 (1992); *University of Illinois*, 365 Ill. App. 3d at 911-12.

¶ 25 In challenging the Commission's decision, the claimant contends that the Commission erred in its assessment of the evidence, the credibility of the witnesses, and the weight to be accorded their testimony. Thus, the claimant essentially is asking us to reweigh the evidence that was presented at the hearing. However, as noted above, it was within the province of the Commission to judge the credibility of the witnesses, resolve any conflicts in the testimony, and draw reasonable inferences from the evidence presented. See *Sisbro Inc.*, 207 Ill. 2d at 207; *O'Dette*, 79 Ill. 2d at 253. The arbitrator, whose decision was adopted by the Commission, found the testimony of Dr. Levin and Mike Amir to be more credible and persuasive than that of Dr. Shapiro and the claimant. In addition, the arbitrator and the Commission determined that two of the three criteria underlying Dr. Shapiro's opinion were not supported by the medical records and other evidence presented at the hearing. The testimony as to the circumstances of the accident, the claimant's initial reports of the incident and of his symptoms, the records of his medical treatment, and the expert opinion of Dr. Levin provide sufficient evidence to support the Commission's finding that there was no causal relationship between the claimant's employment accident and the condition of ill-being in his back. Based on our review of the record, we find

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no valid reason to disturb the Commission's credibility findings and assessment of the weight of the evidence.

¶ 26 In reaching this conclusion, we reject the claimant's assertion that the Commission's decision is subject to reversal because it was based on what he claims are "factual errors." In particular, the claimant claims that the arbitrator and the Commission mischaracterized the severity of his accident and injury by finding that the "printer came in contact" with his leg. First, upon careful review of the claimant's testimony and that of Mike Amir, we are not convinced that the quoted phrase is factually incorrect. Second, even if it were incorrect, we conclude that any mischaracterization was of relatively minor significance, where the arbitrator specifically acknowledged that the printer struck the claimant's left knee and where that that description of the circumstances of the accident was not a determining factor in the Commission's decision. Therefore, the claimed mistake of fact does not provide a basis for reversal of the Commission's decision.

¶ 27 We also reject the contention that the causal connection was established by the chain of events because the claimant had no pain in either his left leg or his back prior to the employment accident and because the treatment of his back condition alleviated his left-leg pain. This argument is refuted by the evidence that the claimant experienced a recurrence of pain after each of the surgical procedures performed on his back. Based on the record presented, we cannot say that the Commission's finding of a lack of causal connection between the employment accident and the current condition of ill-being in the claimant's lower back is against the manifest weight of the evidence.

¶ 28 Finally, we address the claimant's argument that the Commission's decision is contrary to law because prior cases have upheld the award of benefits under the Act in cases where a work-related injury manifested itself long after the employment accident occurred. We find that the cases relied upon by the claimant are distinguishable and not controlling. See *Spector*

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Freight Systems v. Industrial Comm'n, 93 Ill. 2d 507, 510, 445 N.E.2d 280 (1983) (the injured employee reported an injury to both his knee and his back on the day the accident occurred); *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 788-89, 821 N.E.2d 807 (2005) (where the employee's physical condition was weakened after surgery for a work-related accident, subsequent automobile accidents aggravated that condition and did not break the causal chain); *Jewel Food Cos. v. Industrial Comm'n*, 256 Ill. App. 3d 525, 527, 533-34, 630 N.E.2d 865 (1993) (the employer did not dispute that multiple injuries or conditions of ill-being resulted from a single accident, and the issue on appeal concerned whether the employee could recover separate awards under sections 8(d)2 and 8(e) where the subsequent injuries manifested more than two years after the initial injury); *Darling v. Industrial Comm'n*, 176 Ill. App. 3d 186, 192-93, 530 N.E.2d 1135 (1988) (chain of events supported causation based on repetitive trauma, where no evidence directly contradicting causation was presented). Because the cited cases are premised on facts and legal issues that are substantially different from those presented here, they do not support the claimant's assertion that the Commission's decision is contrary to law.

¶ 29 Based upon the foregoing analysis, we affirm the judgment of the circuit court, which confirmed the Commission's decision, and we remand the matter back to the Commission for further proceedings.

¶ 30 Affirmed and remanded to the Commission.