2012 IL App (1st) 113248WC-U

Workers' Compensation
Commission Division
Filed: June 25, 2012

No. 1-11-3248WC

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

JOSEF HEDL,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Cook County
	)	
v.	)	
	)	No. 10 L 51130
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al*.,	)	
(TITAN ELECTRIC,	)	Honorable
	)	Margaret A. Brennan,
Appellee).	)	Judge Presiding.

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

O R D E R

Held: The decision of the Commission, which limited the claimant's entitlement to 1 2/7 weeks of temporary total disability (TTD) benefits, is neither contrary to law or against the manifest weight of the evidence. Further, the Commission properly denied the claimant's request to penalties and attorney fees.

¶ 1 The claimant, Josef Hedl, appeals from a judgment of the circuit court of Cook County confirming a decision of the Illinois Workers' Compensation Commission (Commission)

awarding him 1 2/7 weeks of temporary total disability (TTD) benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 et seq. (West 2008)), for injuries received on February 12, 2009, while in the employ of Titan Electric (Titan). 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.

¶ 3 The claimant testified that he began working as a journeyman electrician (associated with the Local 134 Union) for Titan on January 27, 2009. He said that the job required "a lot of lifting" of around 50 pounds, and also "[a] lot of running up and down ladders." On February 12, 2009, the claimant fell at work and injured his left ankle, knee, hip, and shoulder. On February 14, he received treatment for his injuries and was released to restricted duty, but he testified that his restrictions were not accommodated. On February 18, his doctors released him for full-duty work, but, on February 25, his doctors imposed the restrictions that he avoid using ladders or kneeling.

¶ 4 The claimant testified that his union had a rule that, if a worker was laid off after working 45 days on a job, that worker would be placed at the end of the union's list for workers to fill other jobs. The claimant said that, after receiving his new restrictions, he recalled the union's 45-day rule and asked his foremen, William Roth and William Berge, to lay him off before his 45th day if the plan was indeed to lay him off. The claimant stated that he emphasized that he did not want to be laid off immediately, but only sometime before the 45th day, and only if his superiors planned to lay him off anyway. The next day, the claimant recalled, he was told that he was being laid off immediately. According to the claimant, he reacted angrily when he was shown his termination slip, which indicated that he had requested to be laid off. The claimant explained his reaction as follows:

"I made it clear to everyone who was standing around when they brought it to me I didn't

> ask to be laid off today. I said before the 45 days was up, okay, and I was very angry, and I grabbed the slip, and I left."

After his layoff, the claimant testified, Titan never contacted him to offer light-duty work.

¶ 5 The claimant continued to receive treatment for his injuries. That treatment included a July 15, 2009, surgery. After the surgery, on July 21, his doctors authorized him to return to restricted-duty work. On October 3, 2009, the claimant's doctors again ordered him off of work, but he was released for restricted work again on October 5.

¶ 6 In his testimony, Berge, the general foreman at the time of the claimant's accident, said that, the day before the claimant was laid off, Roth called him and told him that the claimant had requested a layoff. Berge testified that, upon hearing this news, he approached the claimant for confirmation, and the claimant told him "yes, he want[ed] a layoff because he was coming close on his 45 days." Berge stated that the claimant did not condition his layoff request on the premise that Titan would lay him off anyway, but instead asked directly for a layoff. Berge also said that the claimant did not cite injury as the reason for his layoff request. Berge further testified that, during the claimant's return to Titan after the accident but before the layoff, he left to Roth the task of accommodating the claimant's work restrictions, and he said that Roth accommodated those restrictions.

¶ 7 Roth, the claimant's direct foreman with Titan, testified that he checked with the claimant every morning after his injury to ensure that he was able to do the work assigned to him. He said that the claimant reported no problems. Like Berge, Roth testified that the claimant asked for a layoff but did not mention that his request was conditioned on the premise that Titan intended to lay him off anyway. According to Roth, the claimant said that he wanted a layoff "because [his] time [was] running out." Roth said that the claimant never connected his layoff request to his injury.

¶ 8 Roth testified that he was in charge of accommodating the claimant's restrictions but that

he did not learn of the specific restrictions until February 25, the day the claimant requested a layoff. He said that, before that date, he had given the claimant easier work due to his injury.

¶ 9 Thomas Brummel, Titan's field superintendent, testified that Titan had light-duty work available for its employees both in February 2009 and at the time of his testimony. He added that Titan had throughout that period allowed workers to work in light-duty capacities. Brummel agreed that nobody from Titan contacted the claimant after his layoff to offer light-duty work.

¶ 10 After the conclusion of the hearing which was held pursuant to section 19(b) of the Act, the arbitrator found that the claimant was entitled to TTD benefits for 1 2/7 weeks, from July 15, 2009, through July 20, 2009, and from October 3, 2009, and October 5, 2009, both periods in which the claimant's doctors ordered him not to work. The arbitrator declined to award additional TTD benefits, based on the finding that the claimant asked to be laid off on February 25, 2009, and thereby declined available light-duty work. The arbitrator based this ruling on a finding that the testimony of Roth and Berge was more credible than that of the claimant. The arbitrator further found that Titan had light-duty work available "consistently from the day of [the claimant's] injury to the day of" the arbitration hearing. The arbitrator further found that the claimant was entitled to prospective medical treatment.

¶ 11 The claimant sought review of the arbitrator's decision before the Commission. In a decision with one commissioner dissenting, the Commission adopted and affirmed the arbitrator's decision, and it remanded the cause pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 12 The claimant sought judicial review of the Commission's decision in the circuit court of Cook County, which confirmed the Commission's decision. The claimant now appeals.

¶ 13 The claimant's first contention on appeal is that the Commission erred in finding that he was not entitled to additional TTD benefits. The claimant raises two challenges to the Commission's TTD finding.

¶ 14 The claimant's first, and primary, challenge to the Commission's TTD finding is his assertion that the Commission's reasoning contravenes our supreme court's recent decision in *Interstate Scaffolding, Inc. v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, 923 N.E.2d 266 (2010). According to the claimant, *Interstate Scaffolding* stands for the proposition that a claimant is entitled to TTD benefits so long as his condition has not stabilized, regardless of whether the claimant was discharged from work in the meantime. The claimant then observes that the Commission awarded him prospective medical treatment. Thus, the claimant argues, his condition had not stabilized, and the Commission was required to award him TTD up to the date of the hearing. In the claimant's view, the Commission erred as a matter of law when it based its finding on the claimant's request not to work, because "[t]he only issue is whether [his] condition had stabilized." We disagree.

¶ 15 Although the claimant does not directly quote any passages from *Interstate Scaffolding* in his briefs, we presume that the claimant means to rely on *Interstate Scaffolding*'s statement that "[i]t is a well-settled principle that when a claimant seeks TTD benefits, the dispositive inquiry is whether the claimant's condition has stabilized, *i.e.*, whether the claimant has reached maximum medical improvement." *Interstate Scaffolding*, 236 Ill. 2d at 142. However, later in its decision, the supreme court expounded on that statement:

> "Therefore, when determining whether an employee is entitled to TTD benefits, the test is whether the employee remains temporarily totally disabled as a result of a work-related injury and whether the employee is capable of returning to the work force.
>
> The Act provides incentive for the injured employee to strive toward recovery *** by providing that TTD benefits may be suspended or terminated if the employee refuses to submit to medical, surgical, or hospital treatment essential to his recovery, or if the employee fails to cooperate in good faith with rehabilitation efforts. [Citations.] *Benefits may also be suspended or terminated if the employee refuses work falling within the*

physical restrictions prescribed by his doctor. [Citations.]" (Emphasis added.) *Interstate Staffing*, 236 Ill. 2d at 146.

¶ 16 Here, the Commission found that Titan stood ready to provide restricted-duty work but that the claimant requested a layoff for reasons unrelated to his injury. Accordingly, the Commission's decision was based on a finding that the claimant had forgone available work within his physical restrictions, a finding that comports with the supreme court's decision in *Interstate Scaffolding*. We therefore reject the claimant's first challenge to the Commission's TTD finding.

¶ 17 The claimant's second challenge to the Commission's TTD finding is his assertion that the Commission erred in concluding that his layoff was voluntary and that Titan stood ready to provide him restricted-duty work. The time during which a claimant is temporarily totally disabled is a question of fact. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118-19, 561 N.E.2d 623 (1990). The Commission's determination on a question of fact will not be disturbed 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). For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291, 591 N.E.2d 894 (1992).

¶ 18 To assert that the Commission erred in fixing his period of TTD, the claimant advances the narrative that his foremen knew he was injured, wanted him off the job, and used his conditional layoff request as a pretext for terminating his employment. The version of events that the claimant advances matches his testimony. However, it conflicts with the testimony of Roth and Berge, who both testified that the claimant's layoff request was not conditional and was not connected to his injury.

¶ 19 It is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253,

403 N.E.2d 221 (1980). The Commission did so in this case, by finding that Roth and Berge were more credible witnesses than the claimant. We will not intrude on the Comission's fact-finding prerogative by revisiting that question here. The Commission's TTD determination was supported by what it deemed to be credible testimony from Roth and Berge, and we therefore cannot say that the Commission's finding was against the manifest weight of the evidence.

¶ 20 Next, the he claimant argues that the Commission erred in refusing to award him attorney's fees and penalties. According to the claimant, attorney's fees and penalties are appropriate in this case because Titan acted unreasonably in failing to accommodate his restrictions and in firing him as a reaction to his "inquiring about his future work status." However, for the reasons stated above, we uphold the Commission's finding that the claimant did not accompany his layoff request with an inquiry about his future work with Titan. We also uphold the Commission's finding that Titan stood ready to provide restricted-duty work to the plaintiff. Further, Roth testified that Titan made every effort to accommodate the claimant's restrictions, and the Commission found Roth's testimony to be credible. As a result, we disagree with the claimant's factual premise that Titan failed to accommodate his restrictions and fired him as retaliation. By rejecting that premise, we necessarily reject the attorney's fees and penalty request that relies on it.

¶ 21 For these reasons, we affirm the judgment of the circuit court, which confirmed the Commission's decision, and remand for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 22 Affirmed and remanded.