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IN THE APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

DOMINICKS FINER FOODS,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Cook County
ILLINOIS WORKERS' COMPENSATION)	No. 10L51232
COMMISSION AND GREG LASEK,)	
Defendant-Appellee.)	Honorable
)	Alexander P. White,
)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Hoffman, Holdridge, Hudson, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* (1) The Commission's finding that claimant's right hip condition was causally connected to the work accident was not against the manifest weight of the evidence; and (2) the Commission's award of total temporary disability (TTD) benefits was not against the manifest weight of the evidence.

¶ 2 On September 9, 2008, claimant, Greg Lasek, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2006)), seeking benefits from employer, Dominicks Finer Foods, for injuries suffered to his low back and both legs on June 19, 2008.

¶ 3 After a hearing, an arbitrator found claimant proved he sustained injuries to his low back arising out of and in the course of his employment with employer but failed to prove his right

hip condition was worsened or aggravated by the accident. The arbitrator awarded claimant total temporary disability (TTD) benefits in the amount of \$548 per week, for a period of 22 1/7 weeks, from June 20, 2008, through November 21, 2008; and medical expenses pursuant to the medical fee schedule (820 ILCS 305/8.2 (West 2006)).

¶ 4 Claimant filed a petition for review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). On review, the Commission modified the arbitrator's decision finding claimant's "right hip condition is causally connected to the work accident." The Commission awarded claimant TTD benefits through September 14, 2009; and ordered employer to pay "in accordance with the medical fee schedule, the cost of Petitioner's hip replacement surgery and related medical care."

¶ 5 Thereafter, employer filed a petition seeking judicial review in the circuit court of Cook County. The circuit court confirmed the Commission's decision.

¶ 6 Employer appeals, arguing (1) the Commission's finding that claimant's right hip condition is causally connected to the work accident was against the manifest weight of the evidence, (2) the Commission erred as a matter of law finding claimant's right hip condition is causally connected to the work accident, and (3) the Commission's award of TTD benefits through September 14, 2009, was against the manifest weight of the evidence. For the reasons that follow, we affirm the judgment of the circuit court and remand this cause to the Commission.

¶ 7 The following factual recitation is taken from the evidence presented at the arbitration hearing on July 5, 2009, and September 14, 2009. Claimant testified that at the time of the accident he was 62 years of age. He had been employed by employer as a delivery truck driver for 39 years. No other driver had more seniority. Claimant testified the accident occurred at the

beginning of his shift as he was in the process of hooking up his tractor to a trailer. It had rained the night before and, as a consequence, he slipped while stepping onto a metal brace. Claimant fell approximately four feet to the ground below, twisting his body. Claimant experienced immediate excruciating pain in his back, hip, and right leg.

¶ 8 Claimant testified he was able to pull himself inside the tractor cab and drive around the building to the company office. He limped to the office to report the accident. In a written accident report, claimant stated: "Got out of truck and slipped on step and body twisted." In an internally generated report, employer recorded claimant left his tractor, slipped, and "twisted his back and hurt his upper right leg."

¶ 9 Claimant testified he did not have problems with his right hip prior to the accident on June 19, 2008. He did not limp but had for the past seven or eight years "walked like a duck" when his ankles or feet hurt.

¶ 10 Claimant suffered previous work related injuries. Employer introduced in evidence records from the Commission showing prior settlements for 15% loss of use of the left leg as a result of an injury on December 13, 1996 (97WC44534); 5% loss of use of the right leg as a result of an injury on April 23, 1997 (98WC27879); 7 1/2% loss of use of the left arm and 2% loss of use of the whole person as a result of an injury on December 8, 1998 (00WC17161); and 17 1/2 loss of use of the right leg and 7 1/2% loss of use of the right arm as a result of an injury on April 27, 2001 (02WC16025).

¶ 11 On December 3, 2007, approximately six months prior to the accident in issue, claimant presented himself to his primary care physician, Dr. Julie Van, for his Department of Transportation physical examination and was physically cleared to drive for one year. Dr. Van noted

claimant was morbidly obese at 330 pounds. However, she noted no edema in the extremities and recorded plus two patellar reflexes. Dr. Van recorded similar observations during another office visit on June 10, 2008.

¶ 12 Claimant sought treatment with Advocate Occupational Health (Advocate) on the date of his accident, June 19, 2008. Claimant was prescribed physical therapy for low back pain and authorized off from work. The physical therapy records show 17 sessions between June 24, 2008, and August 8, 2008. Claimant reported significant right hip and thigh pain immediately after falling. The discharge summary showed no significant gains.

¶ 13 In addition to physical therapy, claimant continued to follow up with Advocate with complaints of low back pain and right leg pain. On July 31, 2008, the physician noted right radicular pain and advised, "rule out herniated disc versus right hip arthropathy."

¶ 14 Claimant sought treatment with Dr. Michael Zindrick on August 12, 2008. Claimant complained of "right buttock and leg pain radiating into his thigh, groin, and anterior thigh on the right." A magnetic resonance imaging (MRI) study revealed a 3 mm L4-5 disc bulge without stenosis or foraminal narrowing. The impression of Dr. Zindrick was back pain and right leg pain with radicular symptoms and symptoms attributable to osteoarthritis in the right hip, aggravated by the work related injury. Dr. Zindrick referred claimant to Dr. Eric Chassin, a hip specialist. He also authorized claimant off from work.

¶ 15 Claimant sought treatment with Dr. Chassin on August 25, 2008. X-rays confirmed advanced osteoarthritis of the right hip. Dr. Chassin opined "within a reasonable degree of medical and surgical certainty that this man has suffered an aggravation of a preexisting condition during the work injury in June of 2008." Dr. Chassin recommended an injection for the hip to make sure they

were not missing some referred source of pain from the low back. That injection was not done. Dr. Chassin anticipated a total hip arthroplasty at a future date.

¶ 16 On November 21, 2008, Dr. Zindrick opined that claimant's back problems had resolved. However, Dr. Zindrick recorded that claimant should remain off from work because of his need of a total hip arthroplasty. According to Dr. Zindrick, claimant had "ongoing significant symptomatology due to his right hip arthritis *** aggravated by his work-related injury."

¶ 17 On December 19, 2008, Dr. Chassin recommended a total hip arthroplasty.

¶ 18 At employer's request, claimant was evaluated by a joint replacement surgeon, Dr. James Cohen, on January 9, 2009. Dr. Cohen reviewed claimant's medical and therapy records. He also obtained additional hip x-rays that showed severe arthritic changes of the right hip with complete loss of the joint space. Dr. Cohen agreed with the previous recommendation of Dr. Chassin to inject the hip with a local anesthetic and steroid to rule out a referred source of pain from the low back. Likewise, he opined claimant should not be working at his full duties regardless of whether it is claimant's hip or back (causing the symptoms). However, he opined that the injury at work did not change the underlying arthritic condition of claimant's right hip.

¶ 19 Both Dr. Chassin and Dr. Cohen testified by way of evidence depositions. Dr. Chassin testified on behalf of claimant on March 23, 2009. Dr. Chassin is an orthopaedic surgeon concentrating on knees and hips. He first saw claimant on August 25, 2008, and he complained mostly of hip pain. When claimant first saw Dr. Zindrick on August 12, 2008, he was complaining mostly of back pain. Dr. Chassin noted a Trendelenburg gait is one where an individual places a load on an impacted body part and is typical of a hip problem. He also explained that an antalgic gait is one where an individual avoids placing a load on an impacted body part.

¶ 20 Claimant complained of groin and buttock pain. In the orthopaedic world, groin pain is indicative of a hip problem and buttock pain is indicative of a back problem. Dr. Chassin diagnosed advanced osteoarthritis of the right hip and the cause of claimant's complaints was the injury of June 19, 2008. Dr. Chassin conceded that claimant probably had the arthritic hip before the work accident but when he slipped (at work) he may have scraped away the last bit of cartilage.

¶ 21 Dr. Cohen testified on behalf of employer on May 27, 2009. His practice focuses on the hip, knee, and shoulder. Dr. Cohen examined claimant, took a history from him, reviewed claimant's medical records, and took additional x-rays of the right hip. Claimant complained to Dr. Cohen of pain down the lateral aspect of his thigh. Dr. Cohen also noted that the earlier records showed that the lateral leg pain was reproduced in straight leg raising tests. Dr. Cohen noted claimant had an antalgic gait, sparing the right side when walking. X-rays showed severe arthritic changes with a complete loss of the joint space.

¶ 22 Dr. Cohen opined that claimant's advanced arthritis of the hip existed prior to the June 2008 accident. He further opined that the accident did not materially affect the underlying arthritic condition. He explained that claimant's condition was so bad that "the wind can blow the wrong way and it can be worse." He was also of the opinion that if claimant needed a hip replacement, it is something he would have needed regardless of the accident in June 2008. However, he agreed with Dr. Chassin's initial recommendation that a hip injection should be done prior to going ahead with hip replacement surgery in order to make certain that the hip is the pain generator and not the low back. Dr. Cohen would not allow claimant to drive a truck.

¶ 23 Claimant testified he has excruciating pain in his hip and leg. The pain severely limits his normal daily activities. Claimant would like to proceed with the hip replacement surgery.

¶ 24 Following the hearing, the arbitrator found claimant proved by a preponderance of the evidence that he sustained an injury to his lumbar spine as a result of the June 2008 accident, but failed to prove by a preponderance of the evidence that his right hip condition was worsened or aggravated by the accident. Accordingly, the arbitrator awarded claimant TTD benefits through November 21, 2008 (when Dr. Zindrick opined that claimant's back issues were resolved); and medical expenses pursuant to the medical fee schedule (820 ILCS 305/8.2 (West 2006)).

¶ 25 Claimant filed a petition for review of the arbitrator's decision before the Commission. On review, the Commission modified the arbitrator's decision finding claimant's "right hip condition is causally connected to the work accident." In support of its finding, the Commission stated that "[a]lthough the exact mechanism of injury is somewhat unclear, in that Petitioner variously reported falling or slipping and twisting but not falling, the record shows that he experienced a significant jolt, which caused an onset of new symptoms." The Commission awarded claimant TTD benefits through September 14, 2009 (the date of the arbitration hearing); and ordered employer to pay "in accordance with the medical fee schedule, the cost of Petitioner's hip replacement surgery and related medical care."

¶ 26 Thereafter, employer filed a petition seeking judicial review in the circuit court of Cook County. On November 4, 2011, the court confirmed the Commission's decisions. This appeal followed.

¶ 27 Employer argues the Commission erred in finding claimant's right hip condition was causally related to his work accident. We disagree.

¶ 28 A prerequisite to the right to recover benefits under the Act is some causal relationship between the claimant's employment and the injury suffered. *Absolute Cleaning/SVMBL*

v. Illinois Workers' Compensation Comm'n, 409 Ill. App. 3d 463, 470, 949 N.E.2d 1158, 1165 (2011). Compensation may be awarded under the Act even if the conditions of employment do not constitute the sole or principal cause of the claimant's injury. *Brady v. Louis Ruffolo & Sons Construction Co.*, 143 Ill. 2d 542, 548, 578 N.E.2d 921, 924 (1991). "[A] preexisting condition does not prevent recovery under the Act if that condition was aggravated or accelerated by the claimant's employment." *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36, 440 N.E.2d 861, 864 (1982).

¶ 29 The question of whether a claimant's disability is attributable to a degenerative condition or, because of an accident, to an aggravation of a preexisting condition, is a question of fact to be decided by the Commission. *Caterpillar*, 92 Ill. 2d at 37, 440 N.E.2d at 864-865. In resolving questions of fact, it is the function of the Commission to judge the credibility of the witnesses and resolve conflicting medical evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221, 223 (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, 1008 (1987). For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910, 851 N.E.2d 72, 77 (2006). If there is sufficient factual evidence in the record to support the Commission's determination, it will not be set aside on appeal. *Beattie v. Industrial Comm'n*, 276 Ill. App. 3d 446, 450, 657 N.E.2d 1196, 1199 (1995).

¶ 30 Here, although claimant probably had the arthritic hip before the work accident, it did not cause him to lose any time from work. It was only after the June 2008 accident that claimant experienced pain that prevented him from returning to work for employer. Claimant testified he did

not have problems with his right hip prior to the accident but experienced immediate excruciating pain in his back, hip, and right leg after slipping on the metal brace and twisting his body.

¶ 31 Further, the record contradicts employer's contention that claimant did not complain of right hip pain. In an internally generated report, employer recorded claimant left his tractor, slipped, and "twisted his back and hurt his upper right leg." The initial physical therapy record shows claimant reported significant right hip and thigh pain. On July 31, 2008, an Advocate physician noted right radicular pain and advised, "rule out herniated disc versus right hip arthropathy." Dr. Zindrick noted symptoms attributable to osteoarthritis in the right hip, aggravated by the work related injury. X-rays confirmed claimant suffered advanced osteoarthritis of the right hip and Dr. Chassin opined "within a reasonable degree of medical and surgical certainty that this man has suffered an aggravation of a preexisting condition during the work injury in June of 2008." Both Dr. Chassin and Dr. Cohen testified the condition is not necessarily painful, despite an abnormal gait. Claimant testified he did not have problems with his right hip prior to the accident on June 19, 2008. Although claimant may have walked with an abnormal gait, it did not cause him to miss work.

¶ 32 The evidence sufficiently establishes that the work accident, combined with the right hip osteoarthritis, is responsible for claimant's inability to work and is a causative factor in his present disabled condition. Accordingly, the Commission's decision is not contrary to the manifest weight of the evidence.

¶ 33 Alternatively, employer argues the Commission erred as a matter of law finding claimant's right hip condition was causally related to his work accident. Although employer asserts the material facts in the instant case are not in dispute, conflicting inferences may be drawn from

them. In that event, a court of review will give deference to the Commission's decision. *Brady*, 143 Ill. 2d at 549, 578 N.E.2d at 924. "[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. v. Industrial Comm'n*, 207 Ill. 2d 193, 206, 797 N.E.2d 665, 673 (2003).

¶ 34 The Commission's determination of a causal relationship between claimant's work-related injury and his condition of ill-being is not against the manifest weight of the evidence. There is support in the record for the Commission's finding that the work-related accidental injury aggravated or accelerated claimant's preexisting condition.

¶ 35 Employer also argues that the award of additional TTD benefits through September 14, 2009, is not supported by evidence in the record. This argument is without merit.

¶ 36 A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as his condition has stabilized or he is as far recovered as the character of his injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118, 561 N.E.2d 623, 627 (1990). The time during which a claimant is temporarily totally disabled is a question of fact to be resolved by the Commission, and the Commission's decision will not be disturbed unless it is against the manifest weight of the evidence. *Archer Daniels Midland Co.*, 138 Ill. 2d at 118-19, 561 N.E.2d at 627-28.

¶ 37 Here, both Dr. Zindrick and Dr. Chassin recommended claimant remain off work because of his need of a total hip arthroplasty. At the September 14, 2009, arbitration hearing, claimant testified no physician had returned him to work. The Commission found claimant's "right

hip condition is causally connected to the work accident" and awarded claimant TTD benefits through September 14, 2009 (the date of the arbitration hearing). Where the Commission's decision is supported by competent evidence, its finding of fact is not against the manifest weight of the evidence. *J.S. Masonry, Inc. v. Industrial Comm'n*, 369 Ill. App. 3d 591, 600, 861 N.E.2d 202, 210 (2006). Based on the evidence presented at the arbitration hearing, the Commission's decision to award claimant TTD benefits through September 14, 2009, is not against the manifest weight of the record.

¶ 38 For the reasons stated, we affirm the circuit court's judgment confirming the Commission's decision, and remand to the Commission for further proceedings.

¶ 39 Affirmed and remanded to the Commission.