

Workers' Compensation
Commission Division
Filed: February 17, 2012

No. 2-10-1182WC

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

MARK BREGIN,)	Appeal from the
)	Circuit Court of
Appellant and Cross-Appellee,)	Du Page County
)	
v.)	
)	No. 10 MR 35
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, et al.,)	
(Bridgestone/Firestone,)	Honorable
)	Kenneth L. Popejoy,
Appellee and Cross-Appellant).)	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 Commission's finding of a causal connection between the claimant's condition of ill-being and his employment and its determination that the claimant is not entitled to temporary total disability benefits after June 12, 2008, are not against the manifest weight of the evidence.

¶ 1 The circuit court of Du Page County entered an order confirming a Decision of Illinois Workers' Compensation Commission (Commission), awarding the claimant, Mark Bregin, benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 et seq. (West 2004)) for injuries he alleged he received while in the employ of Bridgestone/Firestone (Bridgestone). The claimant has appealed from that portion of the order which confirmed the Commission's denial of any temporary total disability (TTD) benefits for the period after June 12, 2008. Bridgestone has cross-appealed, contending that the Commission's finding of a causal relationship between the claimant condition of ill-being and his employment is against the manifest weight of the evidence. 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 January 7, 2009.

¶ 3 The claimant began his employment as a material handler for Bridgestone on January 7, 2001. His responsibilities included the operation of a forklift to move and stack pallets of passenger and truck tires. Each pallet contained between 6 and 60 tires, and the shelving on which they were stacked reached a height of approximately 25 feet. To perform these duties, the claimant was required to look from side to side and to look up, with his head at a 45-degree angle. According to the claimant, he moved his head in this manner between 140 and 200 times during every shift. During the course of his employment, the claimant used two types of forklifts: those in which the operator was required to stand and those in which the operator could be seated. However, in approximately April 2006, Bridgestone discontinued its use of the type of forklift that allowed the operator to sit down. The claimant stated that the design of the "standing forklifts" did not provide

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any back support for tall operators. He further stated that, because he is nearly six feet, six inches tall, his back was not supported while he was operating a standing forklift, which was approximately 95% of his work day.

¶ 4 The claimant testified that, on September 10, 2007, he "blacked out" while retrieving full pallets of tires in an aisle of Bridgestone's warehouse. He regained consciousness a few seconds later and was able to prevent his forklift from colliding with a stack of empty pallets. He notified his work supervisor of the incident and, about an hour later, went to the emergency room at Edward Hospital. The emergency room records indicate the claimant reported that he had been experiencing chronic neck pain for approximately one year and that the extreme pain had caused him to lose consciousness at work. He was prescribed pain medication and advised to follow up with a spine surgeon.

¶ 5 On September 14, 2007, the claimant consulted his primary care physician, Dr. Sanjay Chatrath, and reported that he had been experiencing numbness in both hands and that, over the previous nine months, his ability to grip things with his hands had decreased. In addition, he reported that, during the prior six months, he began suffering from headaches and from neck pain, which is at its worst when he looks up and to the left. Dr. Chatrath diagnosed cervical radiculitis. A status report, signed by Dr. Chatrath's physician's assistant on September 19, 2007, ordered the claimant off work, stating that he was unable to perform the duties of his job due to the "chronic nature of [his] neck position while working" and that he should be resting and not putting stress on his neck or shoulders. A similar note was written in January 2008. In February 2008, Dr. Chatrath noted that the claimant suffered from intractable pain in his neck and had extensive, severe nerve

damage in the cervical region that would require intense physical therapy and possibly surgery. The claimant's treatment with Dr. Chatrath continued until December 2008 and included several diagnostic tests, various pain medications, the temporary use of a soft, neck collar, and physical therapy.

¶ 6 In September and October 2007, the claimant was treated by Mary Fitzsimmons, a chiropractor, who noted that the claimant suffered from neck pain and spasms resulting from a repetitive-use injury. Fitzsimmons and Dr. Chatrath referred the claimant to Dr. Charles Frederick Harvey, who also diagnosed cervical radiculitis in November 2007. Dr. Michael Sergeant diagnosed cervical disk disease, and Dr. Donald Roland administered three cervical epidural steroid injections during February and March 2008. In April 2008, Dr. Chatrath referred the claimant to Dr. Mark Lorenz, a spine surgeon, who in turn referred him to Dr. Steven Bardfield.

¶ 7 Dr. Bardfield treated the claimant from April to July 2008 and diagnosed cervical myofascial pain, with some focal spasm in specific muscular areas. According to Dr. Bardfield, the claimant's postural abnormality, repetitive overuse of muscular areas, and poor biomechanics while performing his job activities contributed to that diagnosis. Dr. Bardfield explained that when a person performs a physical task hundreds of times during the day over a long period of time, the muscles can become fatigued, then injured, and ultimately tighten up to protect themselves. This amounts to a "vicious cycle" of muscular or myofascial pain syndrome, involving soft-tissue injury and then soft-tissue spasm to protect the area. Dr. Bardfield further explained that performing a particular movement more than 50 times during the day would be considered repetitive.

¶ 8 Dr. Bardfield testified that, in his expert medical opinion, the claimant's work activities were

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more likely than not both the cause and the source of aggravation of his condition of cervical myofascial pain involving multiple stabilizing and supporting muscles in the neck and upper back. According to Dr. Bardfield, the claimant's condition was chronic and resulted from a course of work-related activities over a long period of time. In addition, Dr. Bardfield opined that the claimant's history or "blacking out" without any specific medical cause was likely secondary to acute pain. He further stated that the claimant's subjective pain complaints were consistent with the diagnosis of soft-tissue injury and that cervical myofascial pain syndrome would not be indicated on an MRI. Moreover, Dr. Bardfield explained that the chronic and repetitive nature of the claimant's work activities was not addressed at all in Dr. Avi Bernstein's causation opinion. Though he was of the opinion that the claimant was employable, Dr. Bardfield recommended a course of treatment that included progressive physical therapy, followed by work-conditioning activities and a functional capacity assessment to determine his physical limitations.

¶ 9 At the request of Bridgestone, the claimant also underwent an evaluation by Dr. Avi Bernstein on June 12, 2008. According to the claimant, that examination lasted approximately 10 minutes. Dr. Bernstein stated that he could not explain the medical basis for the claimant's subjective complaints, nor could he relate those complaints to any particular work incident or event. According to Dr. Bernstein, the claimant had reached maximum medical improvement (MMI) and was able to return to work as of June 12, 2008.

¶ 10 The claimant testified that he experienced sporadic pain and problems in the cervical area during the year before the forklift incident and that his symptoms began about five or six years after he started working at Bridgestone. As of the date of the hearing, he continued to suffer from

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headaches and neck pain, primarily on the left side, as well as tingling and numbness on his left extremities. The claimant stated that, because his medical benefits were terminated in September 2008, he was not able to continue with the physical therapy recommended by Dr. Bardfield.

¶ 11 Following the hearing, which was held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2008)), the arbitrator issued a decision, finding that the claimant sustained a work-related injury that manifested itself on September 10, 2007, and that the current condition of ill-being in his cervical spine arose out of and in the course of his employment with Bridgestone. The arbitrator awarded the claimant TTD benefits for 69 ²/₇ weeks period from September 11, 2007, through the date of the hearing on January 7, 2009. The arbitrator also determined that Bridgestone was liable for the previous and prospective medical expenses related to the treatment of the claimant's cervical spine.

¶ 12 Bridgestone sought review of the arbitrator's decision before the Commission. In a decision with one commissioner dissenting, the Commission modified the TTD benefit award to 39 ³/₇ weeks, based on the finding that the claimant had reached MMI on June 12, 2008. The Commission adopted and affirmed the arbitrator's decision in all other respects and remanded the cause for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 13 Bridgestone and the claimant both sought judicial review of the Commission's decision in the Circuit Court of Du Page County. The circuit court confirmed the Commission's decision, and this appeal followed.

¶ 14 We initially consider Bridgestone's cross-appeal, challenging the Commission's finding that the current condition of ill-being in the claimant's cervical spine arose out of and in the course of his

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employment as a material handler and forklift operator. Bridgestone argues that the finding of a causal connection is against the manifest weight of the evidence because Dr. Bernstein, whose MMI date was adopted by the Commission, and several of the other doctors who treated the claimant, questioned the veracity of his allegation of injury and current symptoms. We disagree.

¶ 15 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 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.

¶ 16 In challenging the finding that the condition of ill-being in the claimant's cervical spine is causally connected to his employment, Bridgestone 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, Bridgestone essentially is asking us to reweigh the evidence that was presented at the hearing. However, 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 as to causal connection was adopted by the Commission, found the testimony of the claimant and Dr. Bardfield to be more persuasive than that of Dr. Bernstein. The testimony as to the nature of the claimant's neck condition, his reports of his symptoms, the records of his medical treatment, and the expert opinion of Dr. Bardfield provide sufficient evidence to support the Commission's finding that there was a causal relationship between the claimant's employment and the condition of ill-being in his cervical spine. Based on the record presented, we cannot say that the Commission's finding of a causal connection is against the manifest weight of the evidence.

¶ 17 We next consider the claimant's argument that the Commission erred in concluding that he had achieved MMI as of June 12, 2008, and was not entitled to TTD benefits after that date. The claimant contends that this finding is contrary to law and inconsistent with other aspects of the Commission's decision, which found that he was entitled to prospective medical expenses for treatment recommended by Dr. Bardfield. We note that Bridgestone also argues that the

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Commission's decision is internally inconsistent, but asserts that the Commission erred in awarding medical expenses after the MMI date of June 12, 2008. Both arguments lack merit.

¶ 18 A claimant is temporarily totally disabled from the time an injury incapacitates his from work until such time as she is as far recovered or restored as the permanent character of his injury will permit. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118, 561 N.E.2d 623 (1990). The dispositive test is whether the claimant's condition has stabilized, i.e., whether he has reached MMI. *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072, 820 N.E.2d 570 (2004). In determining whether a claimant has reached MMI, the Commission may consider factors such as a release to return to work, and medical testimony or evidence concerning the claimant's injury, the extent thereof, and, most importantly, whether the injury has stabilized. *Nascote Industries*, 353 Ill. App. 3d at 1072. Once an injured claimant has reached MMI, the disabling condition has become permanent and he is no longer eligible for TTD benefits. *Archer Daniels Midland Co.*, 138 Ill. 2d at 118. The time during which a claimant is temporarily totally disabled presents a question of fact to be determined by the Commission, and the Commission's decision will not be upset on review unless it is against the manifest weight of the evidence. *Archer Daniels Midland Co.*, 138 Ill. 2d at 119-20. A finding of fact is contrary to the manifest weight of the evidence only when the opposite conclusion is clearly apparent, such as where no rational trier of fact could have agreed. *Elmhurst Memorial Hospital v. Industrial Comm'n*, 323 Ill. App. 3d 758, 765, 753 N.E.2d 1132 (2001).

¶ 19 In addition, an employee is entitled to recover all medical expenses that are reasonably required to cure or relieve the effects of an accidental injury arising out of and in the course of his

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employment. 820 ILCS 305/8(a) (West 2008). An employer's liability for such expenses is continuous so long as the medical services are required to relieve the injured employee from the effects of the injury. *Elmhurst Memorial Hospital*, 323 Ill. App. 3d at 764. However, the employee is only entitled to recover for those medical expenses which are reasonable and causally related to his industrial accident. *Zarley v. Industrial Comm'n*, 84 Ill. 2d 380, 389, 418 N.E.2d 717 (1981). The question of whether medical treatment is causally related to a compensable injury is one of fact to be determined by the Commission, and its finding on the issue will not be reversed on review unless contrary to the manifest weight of the evidence. *Zarley*, 84 Ill. 2d at 389-90.

¶ 20 Based upon the evidence, the Commission determined that the claimant's period of TTD ended as of June 12, 2008, the date on which Dr. Bernstein examined the claimant and found that there was no reason why he could not return to work. Dr. Bernstein's opinion in this regard is sufficient to support the Commission's determination as to the period during which the claimant was entitled to TTD benefits. Additionally, we find no inconsistency with the Commission's determination in this regard and its award of medical expenses incurred after June 12, 2008.

¶ 21 A finding of concurrent TTD is not a prerequisite of an award for medical expenses under section 8(a) of the Act. See *Zarley*, 84 Ill. 2d at 389. As the supreme court has recognized, "[e]mployees often suffer injuries that require medical treatment but do not result in temporary total disability or which are required after the disability terminates." *Zarley*, 84 Ill. 2d at 389.

¶ 22 Here, the Commission accepted Dr. Bernstein's opinion as to the date on which the claimant had reached MMI, but also apparently concluded that the claimant's condition, though stable, required further treatment in the form of progressive physical therapy and work conditioning. It was

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the responsibility of the Commission to judge the credibility of the witnesses, resolve any conflicts in the testimony, and draw reasonable inferences from the evidence presented. *Sisbro Inc.*, 207 Ill. 2d at 207. The finding that the claimant was entitled to recover for the expenses of prospective treatment is supported by the testimony of Dr. Bardfield and the claimant, both of whom stated that the prescribed physical therapy was beneficial in terms of reducing the level of his myofascial pain. Based on this record, we conclude that the Commission's decision with respect to prospective medical expenses is not contrary to the manifest weight of the evidence, nor does it conflict with the Commission's determination as to the period of TTD. See *Elmhurst Memorial Hospital*, 323 Ill. App. 3d at 765 (holding that, although the claimant had reached MMI and injection therapy did nothing to cure her chronic condition, the expense of such therapy was recoverable under section 8(a) of the Act because it "helped to 'relieve the effects' of her *** chronic pain").

¶ 23 For these reasons, we affirm the judgment of the circuit court, which confirmed the Commission's decision, and remand the cause to the Commission for further proceedings.

¶ 24 Affirmed and remanded.