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2012 IL App (2d) 110134WC-U

Order filed February 17, 2012

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

WAL-MART,)	Appeal from the Circuit Court
)	of the 18th Judicial Circuit,
Appellant,)	Du Page County, Illinois
)	
v.)	Appeal No. 2-11-0134WC
)	Circuit No. 10-MR-910
)	
THE ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION <i>et al.</i> (Lenora Becker,)	Bonnie M. Wheaton,
Appellee).)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The Commission's finding that the claimant proved a causal connection between her current condition of ill-being and a work-related accident was not against the manifest weight of the evidence.

¶ 2 The claimant, Lenora Becker, filed an application for adjustment of claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2006)) seeking benefits for a back injury she claimed to have sustained while working as an employee of respondent Wal-

Mart (employer). Following a hearing, an arbitrator found that the claimant had established that her current condition of ill-being was causally related to a work-related accident and awarded temporary total disability (TTD) benefits, medical expenses, and prospective medical treatments.

¶ 3 The employer appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission). The Commission corrected three clerical errors in the arbitrator's decision and otherwise affirmed and adopted the arbitrator's decision as corrected. Commissioner Lindsay dissented from the Commission's decision.

¶ 4 The employer sought judicial review of the Commission's decision in the circuit court of Du Page County. The circuit court affirmed the Commission's decision. This appeal followed.

¶ 5 **FACTS**

¶ 6 On August 13, 2007, the claimant worked for the employer as an overnight assistant manager. Her duties including stocking, unloading of trucks, and assisting customers. Shortly after 1 a.m., the claimant went to the warehouse area of the store to retrieve pillows for the domestic department. While she was standing between two rows of pallets, a box fell off one of the pallets onto her chest, causing her to bend over backwards against a pallet and trapping her in that position for approximately 10 minutes. The claimant testified that she immediately felt pain in her back. Nevertheless, she returned to work. While she was walking around, the claimant felt a stabbing pain in the center part of her lower back, right above the tailbone.

¶ 7 At approximately 6 a.m., the claimant informed another assistant about the incident. She sat down for approximately 15 minutes while she spoke with the other assistant. When she stood up to leave, she felt a shooting pain that went from her lower back, up her neck, and back down

again. The claimant testified that she immediately burst into tears because she had never felt pain like that before. She was then sent to Concentra Medical Center for treatment.

¶ 8 When the claimant presented to Concentra later that day, she described her work accident and stated that she felt pain immediately after the incident. She complained of moderate and sharp low back pain rated 5 on a scale of 1 to 10. A Concentra physician diagnosed a sacroiliac strain and a back contusion, prescribed physical therapy and Advil, and placed the claimant on light duty.

¶ 9 The claimant attended one session of physical therapy on August 15, 2007. She gave a similar account of her work injury to the physical therapist. The physical therapist's notes indicate that the claimant was "unable to do any type of exercise without severe pain." The therapist concluded that the claimant was a "good candidate for physical therapy to decrease her pain." However, the therapist's notes indicate that the claimant "expressed her disagreement [with] therapy and does not want to continue."

¶ 10 The claimant returned to Concentra on August 22, 2007. She complained of persistent sharp, stabbing pain which was exacerbated by movement, sitting, lying down, or standing. She resumed physical therapy on August 23, 2007, reporting a continued burning pain in her low back and a stabbing pain when sitting or lying on her back. On August 29, 2007, the claimant returned to Concentra and complained of constant, burning pain in the lower back and left buttock rated 4 on a scale of 1 to 10.

¶ 11 The physical therapist's August 29, 2007, records indicate that the claimant was "progressing with therapy intervention" and that, although the claimant continued to complain of pain, she was "ambulating [with] a more erect posture." The therapist also noted that she saw the

claimant pushing her mother in a wheelchair at Wal-Mart on August 28, 2007, and that the claimant seemed to have no problem walking or pushing the wheelchair. However, on September 19, 2007, Concentra physician Osama Thalji referred the claimant for an orthopedic evaluation because he found that there was "no improvement" in the claimant's symptoms. Dr. Thalji's notes of his examination of the claimant's lumbar region indicate "Negative Waddells."¹

¶ 12 On September 27, 2007, the claimant saw Dr. Charles Mercier, an orthopedic surgeon. Dr. Mercier diagnosed an acute lumbosacral sprain and recommended an MRI of the lumbar spine to rule out a nerve root irritation or occult fracture. The MRI was performed on October 10, 2007. The radiologist interpreted the MRI as revealing a small disc bulge at T11-T12 and a normal lumbar spine without stenosis or neural foraminal narrowing.

¶ 13 Although the claimant testified that her pain never ceased, she sought no further medical care for her back until August 2008. On August 6, 2008, the claimant was sitting on the floor folding clothing at work when her back "locked up" and she was unable to move. Two days later, the claimant went to the emergency room of Central Du Page Hospital. She reported that she had injured her back at work one year earlier, that she had experienced low back pain on and off since then, and that her condition had progressively worsened. The claimant underwent another MRI of her lumbar spine, which the radiologist interpreted as demonstrating a small disc bulge or protrusion at T11-T12 without stenosis or neural foraminal narrowing and minimal degenerative changes at L4-L5 and L5-S1 without central spinal stenosis or disc herniation.

¹ "Waddell's signs" are physical reactions that may indicate a non-organic or psychological component to chronic low back pain. They have also been used to detect symptom magnification.

¶ 14 Additional physical therapy resulted in no improvement of the claimant's symptoms. On September 18, 2008, she was discharged from therapy. The therapist's notes indicate that the claimant continued to experience left-sided low back pain with occasional radicular symptoms into the left lower extremity.

¶ 15 Beginning on August 28, 2008, the claimant treated with Dr. Howard Freedberg at Suburban Orthopedics. The claimant told Dr. Freedberg that she had a history of low back pain dating back to the work injury of August 2007. She complained of constant pain in the lower left side of her back, muscle spasms in the back, and numbness on the lateral side of her left leg. Dr. Freedberg diagnosed intractable lower back pain and T11-T12 and L4-L5 degenerative disc disease. The claimant returned to Dr. Freedberg on September 11, 2008, and reported that she was having more spasms in her low back, shooting pain in the left leg, and numbness in the left thigh. The claimant testified that the employer terminated her employment in September 2008.

¶ 16 On February 12, 2009, the claimant returned to Suburban Orthopedics, where she was examined by Dr. Timothy McNally. The claimant reported that her pain remained constant, that she was experiencing weakness in her legs, and that her left leg was "giving out." Dr. McNally noted examination findings of severe mid lumbar and S1 joint and sciatic notch tenderness to palpation and restricted range of motion. He prescribed a closed MRI of the lumbar spine and an EMG of the lower extremities. The claimant has yet to undergo those tests.

¶ 17 On February 16, 2009, the claimant was examined by Dr. Edward Goldberg at the request of the employer. Dr. Goldberg found claimant's lumbar range of motion was limited by reports of pain and noted that the claimant demonstrated some sign of symptom magnification. He concluded that the claimant had sustained a lumbar strain, which he related to the August 13,

2007, work incident. Dr. Goldberg opined the October 10, 2007, MRI showed a normal lumbar spine and that the August 8, 2008, MRI demonstrated some minimal disk degeneration at T11-T12 but an otherwise normal lumbar spine. He concluded that minimal disc degeneration at T11-T12 would not cause left-sided lower back pain and that the claimant's lumbar strain would have resolved within four months. Accordingly, he opined that the claimant was at maximum medical improvement from the effects of the August 13, 2007, accident by December 2007, and that the claimant's current condition was not causally related to her work injury. He also opined that the August 2008 work accident would have caused, at most, a lumbar strain, and the claimant would have reached maximum medical improvement from that strain by the time Dr. Goldberg evaluated her in February 2009. Accordingly, Dr. Goldberg opined that no further treatment was necessary.

¶ 18 The claimant returned to Dr. McNally on July 7, 2009, complaining of continued radicular symptoms into the left leg and lumbar pain with no improvement. Dr. McNally reviewed the MRI film of August 8, 2008, and opined that it showed some asymmetry of the right S1 nerve root and foraminal narrowing at L5-S1. Dr. McNally opined that the claimant's work-related injury appeared to have "initiated or at least exacerbated the degenerative cascade in the discs of her lumbar spine." He again recommended a closed MRI of the claimant's lumbar spine and an EMG. He also suggested a comprehensive pain management program.

¶ 19 During the arbitration hearing, the claimant testified that she had never suffered a lower back injury or sought medical treatment for her lower back prior to her August 13, 2007, work injury. She testified that she had suffered pain continuously since the accident and that she continued to experience a burning sensation at the top of her left buttock and constant low back

pain. The claimant testified that she did not seek medical treatment between October 2007 and August 2008 because she was preoccupied with caring for her ill sister and mother, both of whom were living with her. She testified that she suffered no new injuries or accidents from October 2007 to August 2008. On cross-examination, the claimant denied disagreeing with the physical therapist's recommendations on August 15, 2007, and denied pushing her mother in a wheelchair at Wal-Mart in August or September 2007.

¶ 20 The arbitrator found that the claimant's current condition of ill-being is causally related to her August 13, 2007, work accident. Although the arbitrator acknowledged Dr. Goldberg's opinion and noted that the claimant appeared to exaggerate the pain she was experiencing during the hearing, the arbitrator found that the claimant had presented "sufficient credible evidence" to establish causation. Specifically, the arbitrator relied on the fact that the claimant had suffered no back injury and received no treatment for any such injury prior to her August 13, 2007, work accident and also on "the lack of any evidence of an accident or injury subsequent to that date." The arbitrator also relied upon the findings and opinions of Dr. McNally and found his opinions to be "at least as credible and persuasive" as the opinions of Dr. Goldberg. In addition, the Commission noted that the claimant "gave a consistent history of her injuries." Moreover, the arbitrator found that the claimant's testimony that she did not pursue treatment for her back from October 2007 through August 2008 because she was caring for her ill sister was "believable," noting references to the claimant's ill family members in the medical records.

¶ 21 The arbitrator also ruled that the employer was liable for the medical expenses incurred by the claimant through the date of hearing. In addition, the arbitrator found that the EMG and the closed MRI of the claimant's lumbar spine prescribed by Dr. McNally were reasonable and

necessary medical treatments and ordered the employer to pay all reasonable and necessary costs associated with those treatments. Further, the arbitrator awarded the claimant TTD benefits from August 13, 2008 (the date the claimant stopped working), through the date of the arbitration hearing.

¶ 22 The employer appealed the arbitrator's decision to the Commission. After correcting three clerical errors in the arbitrator's decision, the Commission affirmed and adopted the decision as corrected.

¶ 23 Commissioner Lindsay dissented. She concluded that there was "ample evidence in the record *** discrediting [the] [c]laimant's credibility" and that such evidence "undermine[d] any other evidence the Majority and Arbitrator *** relied upon in finding causation." For example, Commissioner Lindsay stressed the arbitrator's finding that the claimant had seemingly exaggerated her pain during the arbitration hearing. Moreover, Commissioner Lindsay noted the claimant's denial that she pushed her mother in a wheelchair in the Fall of 2007, which was contradicted by the testimony of the claimant's physical therapist. Commissioner Lindsay also maintained that the claimant gave inconsistent histories of her injury and treatment and made inconsistent complaints to various doctors. In addition, Commissioner Lindsay concluded that Dr. Goldberg presented the only credible causation opinion because he was the only doctor to review the claimant's prior treatment records. She asserted that Drs. Freedberg and McNally, by contrast, based their opinions "solely on [the] [c]laimant's subjective complaints and inaccurate histories."

¶ 24 The claimant sought judicial review of the Commission's decision in the circuit court of Du Page County, which affirmed the Commission's decision. This appeal followed.

¶ 26 The employer argues that the Commission's finding that the claimant's current condition of ill-being is causally related to her August 13, 2007, work accident is against the manifest weight of the evidence. To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). In resolving disputed issues of fact, including issues related to causation, it is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041 (1999). We will overturn the Commission's causation finding only when it is against the manifest weight of the evidence. A factual finding is against the manifest weight of the evidence if the opposite conclusion is "clearly apparent." *Swartz v. Illinois Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086 (2005). The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002).

¶ 27 Applying these standards, we cannot say that the Commission's conclusion that the claimant's current condition of ill-being is causally related to her August 13, 2007, work accident was against the manifest weight of the evidence. "[A] chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the

employee's injury." *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63-64 (1982). Here, the claimant testified that she experienced pain in her lower back and other symptoms immediately following the work accident and that her symptoms continued and progressed until the time of the hearing. Further, the claimant testified that she had never suffered a lower back injury or sought medical treatment for her lower back prior to her August 13, 2007, work injury, and there is no evidence in the record suggesting otherwise. Accordingly, the claimant's testimony, standing alone, provided a "chain of events" that was sufficient to establish causation. Moreover, the claimant's testimony was bolstered by Dr. McNally's medical opinion that the claimant's work accident "initiated or at least exacerbated the degenerative cascade in the discs of her lumbar spine."²

² An accidental injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Thus, even if the claimant had a preexisting degenerative condition which made her more vulnerable to injury, recovery for an accidental injury will not be denied as long as she can show that her employment was also a causative factor. *Sisbro*, 207 Ill. 2d at 205; *Swartz*, 359 Ill. App. 3d at 1086. A claimant may establish a causal connection in such cases if she can show that a work-related injury played a role in aggravating her preexisting condition. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 181 (1983); *Azzarelli Construction Co. v. Industrial Comm'n*, 84 Ill. 2d 262, 266 (1981); *Swartz*, 359 Ill. App. 3d at 1086. Whether an accident aggravated or accelerated a preexisting condition is a factual question to be decided by the Commission. *Sisbro*, 207 Ill. 2d at 206. It is the Commission's province to weigh medical opinion evidence on this issue, and we will overturn the Commission's finding

¶ 28 The employer argues that the Commission's causation finding is against the manifest weight of the evidence because the Commission found that the claimant had exaggerated her pain and "concluded that the claimant's testimony was exaggerated and not credible." We disagree. The Commission did not find that the claimant's testimony lacked credibility. To the contrary, it expressly found several aspects of her testimony to be credible and relied largely upon the claimant's testimony in finding causation. For example, the Commission relied on the claimant's testimony that she had suffered no back injury and received no treatment for any such injury prior to her August 13, 2007, work accident. In addition, the Commission found that the claimant "gave a consistent history of her injuries" and that the claimant's explanation for the 10-month gap in her treatment between October 2007 and August 2008 was "believable." Thus, although the Commission found that the claimant appeared to exaggerate the pain she was experiencing *during the hearing*, it clearly did not find the claimant's testimony incredible in all respects. In fact, it found just the opposite and concluded that the claimant had presented "sufficient credible evidence" to establish causation.

¶ 29 The employer points to other evidence in the record which, according to the employer, undermines the claimant's credibility. For example, the employer notes that the claimant denied telling her physical therapist in August 2007 that she was in too much pain to participate in _____ only when it is against the manifest weight of the evidence. Here, based on Dr. McNally's opinion, the Commission could have reasonably determined that the August 13, 2007, work accident aggravated or accelerated a preexisting degenerative condition in the claimant's lumbar spine.

therapy and denied pushing her mother in a wheelchair in the Fall of 2007. These denials contradicted the physical therapist's records. Moreover, the employer notes that Dr. Goldberg concluded that the claimant was magnifying her symptoms. However, Dr. McNally did not indicate that he found any evidence of symptom magnification, and Dr. Thalji noted that the claimant exhibited "Negative Waddells" when he examined her, arguably suggesting that the claimant was not magnifying her symptoms. It is the Commission's province to assess the credibility of witnesses, to determine what weight to give testimony, and to resolve conflicts in the evidence, particularly medical opinion evidence. *Hosteny*, 397 Ill. App. 3d at 675. We cannot say that the Commission's decision to credit the claimant's testimony and Dr. McNally's testimony over that of Dr. Goldberg was against the manifest weight of the evidence.

¶ 30 The employer also argues that Dr. Goldberg's opinion was more credible than that of Dr. McNally because Dr. Goldberg reviewed the claimant's prior medical records and took into account the claimant's exaggeration of her symptoms, whereas Dr. McNally based his opinion entirely upon the claimant's "incredible, subjective complaints of pain." We disagree. First, Dr. McNally did not rely solely on the claimant's subjective complaints in rendering his causation opinion. He also relied upon his objective examination findings (including his finding that the claimant exhibited a restricted range of motion) and his review of the August 8, 2008, MRI film. Moreover, although the Commission found that the claimant had exaggerated her pain symptoms *during the arbitration hearing*, there is nothing to indicate that the claimant exaggerated her pain during the course of her treatment with Dr. McNally. The Commission did not make that inference, and it was not required to do so.

¶ 31 Finally, the employer argues that the Commission's decision to award TTD benefits and medical expenses was against the manifest weight of the evidence. However, the employer contests these awards only on the basis of causation. Because we uphold the Commission's causation finding, we also uphold the Commission's award of TTD benefits and medical expenses.

¶ 32 **CONCLUSION**

¶ 33 For the foregoing reasons, we affirm the judgment of the Du Page County circuit court, which confirmed the Commission's decision. The matter is remanded to the Commission for further proceedings.

¶ 34 Affirmed and remanded.