

2012 IL App (3d) 110147WC-U
NOS. 3-11-0147WC, 3-11-0150WC cons.
Order filed February 21, 2012

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IN THE APPELLATE COURT

OF ILLINOIS

THIRD DISTRICT

Workers' Compensation Commission Division

LELA MOORE,)	Appeal from
Appellant,)	Circuit Court of
v. (No. 3-11-0147WC))	LaSalle County
THE ILLINOIS WORKERS' COMPENSATION)	No. 10MR107
COMMISSION <i>et al.</i> (HCC, Inc., Appellee).)	
-----)	
LELA MOORE,)	No. 10MR107
Appellee,)	
v. (No. 3-11-0150WC))	Honorable
THE ILLINOIS WORKERS' COMPENSATION)	Joseph P. Hettel,
COMMISSION <i>et al.</i> (HCC, Inc., Appellant).)	Judge Presiding.

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

RULE 23 ORDER

¶ 1 *Held:* The Workers' Compensation Commission's decision to end the third period of claimant's temporary total disability benefits on March 6, 2009, and not March 25, 2009, was not against the manifest weight of the evidence; and the Workers' Compensation Commission's decision to vacate the award of prospective medical care was not against the manifest weight of the evidence.

¶ 2 On May 23, 2008, claimant, Lela Moore, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 through 30 (West 2006)), seeking benefits from employer, HCC, Inc., for injuries suffered to her left hand on February 28, 2008.

¶ 3 After a hearing, an arbitrator found claimant proved she sustained accidental injuries arising out of and in the course of her employment with employer and awarded claimant total temporary disability (TTD) benefits in the amount of \$265.53 per week for a period of 42 6/7 weeks (February 29, 2008, through March 30, 2008; April 25, 2008, through May 18, 2008; and July 24, 2008, through March 25, 2009). Further, the arbitrator awarded claimant medical expenses in the amount of \$3,192.36, and ordered employer to "authorize and pay for prospective pain management care through board certified pain management physician and board certified anesthesiologist Dr. Kloc." With respect to surveillance videotapes of claimant participating in a bowling league on March 6, 2009, the arbitrator found that they revealed no significant left hand activity.

¶ 4 On review, the Illinois Workers' Compensation Commission (Commission) modified the arbitrator's decision "by ending the third interval of temporary total disability benefits on March 6, 2009[,] rather than March 25, 2009[,] and by vacating the award of prospective care." In support of its decision modifying the arbitrator's decision, the Commission stated:

"The Arbitrator indicated that he gave Respondent's surveillance video of March 6, 2009 'little weight.' The Commission views the evidence differently. The video shows Petitioner cradling a bowling ball in her affected left hand, using both hands to lift the ball and, on one occasion, using only her left hand to carry the ball several feet. While it is true that these activities are not akin to

continuous work tasks, they nevertheless raise some concern about the validity of Petitioner's pain complaints. They also cause the Commission to question whether Petitioner still had reflex sympathetic dystrophy or complex regional pain syndrome as of March 6, 2009. Both the video and the testimony of Petitioner's co-worker, Joshua Holland, prompt the Commission to conclude that Petitioner could have performed the bagging job as of March 6, 2009. The Commission perceives Petitioner as reluctant to return to work as a bagger and notes Dr. Ingberman's opinion that secondary gain was 'one of the factors in [Petitioner's] case.' "

¶ 5 In all other respects, the Commission affirmed and adopted the arbitrator's decision.

¶ 6 Thereafter, claimant filed a petition seeking judicial review in the circuit court of LaSalle County. On January 28, 2011, the circuit court entered an order confirming that portion of the Commission's decision "on the issue of temporary total disability and the denial of benefits as of [March 6, 2009,]" and reversing that portion of the Commission's decision "on the issue of prospective medical."

¶ 7 Claimant appeals, arguing the Commission's decision to end the third period of claimant's TTD benefits on March 6, 2009, and not March 25, 2009, was against the manifest weight of the evidence. Employer appeals, arguing the Commission's decision to vacate the award of prospective medical care was not against the manifest weight of the evidence.

¶ 8 The appeals have been consolidated for our review. We affirm that portion of the circuit court's judgment which confirmed the Commission's decision to end claimant's TTD benefits on March 6, 2009; reverse that portion of the circuit court's judgment which reversed the Commission's decision to vacate the award of prospective medical care; and remand the matter to the Commission for further proceedings.

¶ 9 The parties are aware of the facts taken from the evidence presented at the arbitration hearing on March 10, 2009, and March 25, 2009, and they will not be set forth in detail.

¶ 10 Claimant appeals, arguing the Commission's decision to end the third period of claimant's TTD benefits on March 6, 2009, and not March 25, 2009, was against the manifest weight of the evidence. We disagree.

¶ 11 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); *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072, 820 N.E.2d 570 (2004). In order to prove temporary total disability, the employee must demonstrate not only that he did not work, but also that he was unable to work. *Rambert v. Industrial Comm'n*, 133 Ill. App.3d 895, 903, 477 N.E.2d 1364, 1370 (1985). The time period of TTD is a question of fact for the Commission, and its decision should 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. In resolving questions of fact, it is the function of the Commis-

sion 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).

¶ 12 With respect to the surveillance videotapes, the video we have been provided shows claimant participating in a bowling league on March 6, 2009. Claimant appears to have no difficulty. Claimant cradles the bowling ball on her left, passing the ball to her right hand as she approaches the lane. Claimant repeatedly passes or rolls the ball from one hand to the other hand. At one point, claimant tosses the bowling ball into the air and back down into her left hand. She claps vigorously for others and returns two balls, one in each hand, to the ball racks. Overall, claimant seemingly favors the use of her left hand over the use of her right hand for all activity except the actual throwing of the bowling ball down the lane. The Commission found the evidence on the videotapes raised concerns about the validity of claimant's pain complaints, and we agree. The matters cited by claimant for disregarding the videotapes go to weight and credibility, and therefore they were within the province of the Commission to decide.

¶ 13 We note Joshua Holland testified that he successfully performed the "small

components" job with his right hand in a cast and his index finger immobilized. Based on the evidence presented in the record, we conclude that the Commission's award of a third period of TTD benefits, from July 24, 2008, through March 6, 2009, was not against the manifest weight of the evidence.

¶ 14 Employer appeals, arguing the Commission's decision to vacate the award of prospective medical care was not against the manifest weight of the evidence. We agree.

¶ 15 Section 8(a) of the Act entitles a claimant to compensation for all necessary first aid, medical and surgical services and all necessary medical, surgical and hospital services "thereafter incurred" that are reasonably required to cure or relieve the effects of injury. 820 ILCS 305/8(a) (West 2006). Prescribed services not yet performed or paid for are considered to have been "incurred" within the meaning of the statute. *Certified Testing v. Industrial Comm'n*, 367 Ill. App. 3d 938, 948, 856 N.E.2d 602, 611 (2006).

¶ 16 In this case, Dr. Ronald Kloc testified on February 5, 2009, referencing his treatment of claimant and stating:

"Soon after utilizing her left hand in any capacity she begins having increased throbbing pain. She would have to incur a job where she does not use her left hand at all, currently."

Dr. Kloc further opined that claimant could not carry even small items with her left hand.

¶ 17 In contrast, the Commission observed claimant on March 6, 2009, "cradling a bowling ball in her affected left hand, using both hands to lift the ball and, on one occasion, using only her left hand to carry the ball several feet." Questioning whether claimant continued

to suffer reflex sympathetic dystrophy or complex regional pain syndrome as of March 6, 2009, the Commission vacated the award of prospective medical care.

¶ 18 In a workers' compensation case, the claimant has the burden of proving, by a preponderance of the evidence, all of the elements of her claim. *O'Dette*, 79 Ill. 2d at 253, 403 N.E.2d at 223. Whether a causal relationship exists between a claimant's employment and her injury is a question of fact to be resolved by the Commission (*Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244, 461 N.E.2d 954, 958 (1984)), as is the extent of her disability (*Oscar Mayer & Co. v. Industrial Comm'n*, 79 Ill. 2d 254, 256, 402 N.E.2d 607, 608 (1980)) and the reasonableness and necessity of medical expenses (*F & B Manufacturing Co. v. Industrial Comm'n*, 325 Ill. App. 3d 527, 534, 758 N.E.2d 18, 24 (2001)). In resolving such issues, it is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *O'Dette*, 79 Ill. 2d at 253, 403 N.E.2d at 223. The Commission's determinations on questions of fact will not be disturbed on review unless they are against the manifest weight of the evidence; that is to say, unless an opposite conclusion is clearly apparent. *Orsini*, 117 Ill. 2d at 44, 509 N.E.2d at 1008.

¶ 19 As the trier of fact, exercising original jurisdiction, the Commission resolved the issues of the nature and extent of the claimant's injuries and the reasonableness and necessity of her prospective medical expenses. The Commission's decision was not contrary to the manifest weight of the evidence.

¶ 20 Based upon the foregoing analysis, we affirm that portion of the circuit court's judgment which confirmed the Commission's decision to end claimant's TTD benefits on March

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6, 2009; reverse that portion of the circuit court's judgment which reversed the Commission's decision to vacate the award of prospective medical care; and remand the matter to the Commission for further proceedings.

¶ 21 Affirmed in part, reversed in part, and remanded to the Commission.