2012 IL App (3d) 110609WC-U
No. 3-11-0609WC
Order filed November 27, 2012

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IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

TRI-COUNTY PERSONNEL MANAGEMENT, INC., and ILLINOIS INSURANCE GUARANTY FUND,	)	Appeal from the Circuit Court of Peoria County.
Plaintiffs-Appellants,	)	
v.	)	No. 10-MR-321
ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al*.,	)	
(Patrick Gordon, Defendant-Appellee).	)	Honorable Michael E. Brandt, Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hoffman, Holdridge, Turner, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* Evidence was sufficient to support Commission's finding that supplemental medical expenses were for treatment of claimant's work-related accident and not the result of any "injurious practices" on claimant's part; thus, Commission's award of such expenses is not against the manifest weight of the evidence.

¶ 2 Respondent, Tri-County Personnel Management, Inc., appeals from a judgment of the circuit court of Peoria County confirming a decision of the Illinois Workers' Compensation Commission (Commission) awarding supplemental medical expenses to claimant, Patrick Gordon, pursuant to section 8(a) of the Workers' Compensation Act (Act) (820 ILCS 305/8(a) (West 2008)). Respondent argues that the supplemental award was erroneous because claimant failed to establish that the medical care for which he seeks payment was related to his industrial accident. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The facts underlying this appeal are set forth in detail in our order deciding the previous appeal in this matter. *Gordon v. Illinois Workers' Compensation Comm'n*, No. 3-08-0347WC (March 6, 2009) (unpublished order under Supreme Court Rule 23). Accordingly, we only summarize those facts necessary to resolve the issue presently before us. Claimant sustained a crush injury to his left hand on May 8, 1998, while assigned by respondent, a temporary employment agency, to work for Superior Consolidated Industries (Superior). Claimant was diagnosed with reflex sympathetic dystrophy (RSD) and depression. He filed an application for adjustment of claim seeking benefits pursuant to the Act. A hearing on claimant's application for adjustment of claim was held on August 24, 2004, and the arbitrator issued her decision on September 13, 2004. The arbitrator found that claimant sustained an accident that arose out of and in the course of his employment. In addition, the arbitrator concluded that claimant's condition of ill-being from May 8, 1998, through January 28, 1999, when claimant's treating physicians found that he had reached maximum medical improvement (MMI), was related to the accident. However, citing to evidence that claimant had hindered his recovery by applying a tourniquet around his left forearm, the

arbitrator found that any medical treatment or diminishment in claimant's condition after January 28, 1999, was the result of conduct which imperiled or retarded his recovery and therefore was not related to the May 8, 1998, accident. See 820 ILCS 305/19(d) (West 1998) (providing that if an employee "shall persist in insanitary or injurious practices which tend to either imperil or retard his recovery ***, the Commission may, in its discretion, reduce or suspend the compensation of any such injured employee"). The arbitrator awarded claimant temporary total disability (TTD) benefits for a period of 25-6/7 weeks, from May 9, 1998 (the day after the accident), to November 12, 1998 (when claimant returned to Superior's employ in a light-duty capacity). See 820 ILCS 305/8(b) (West 1998). The arbitrator also determined that claimant was entitled to 47-1/2 weeks of permanent partial disability (PPD) benefits under section 8(e) of the Act (820 ILCS 305/8(e) (West 1998)) because the injuries sustained resulted in a 25% loss of use of the left hand.

¶ 5 On September 29, 2005, the Commission issued a decision and opinion on review affirming the arbitrator's award of TTD and PPD benefits. However, the Commission determined that claimant was entitled to reasonable and necessary medical expenses in the amount of $11,317 pursuant to section 8(a) of the Act (820 ILCS 305/8(a) (West 1998)), which included a sum for palliative care for claimant's "undisputed condition of reflex sympathetic dystrophy (RSD) and depression after January 28, 1999[,] despite the MMI findings." Although the Commission rejected other medical expenses requested by claimant, it expressly awarded claimant "future palliative and psychological/psychiatric care under Section 8(a)." Thereafter, the circuit court of Peoria County modified the decision of the Commission to award additional TTD benefits and medical expenses. Both parties appealed from the circuit court's decision.

¶ 6 In an order filed on March 6, 2009, this court reinstated the decision of the Commission in its entirety. *Gordon*, No. 3-08-0347WC (unpublished order under Supreme Court Rule 23). Relevant here, we determined that the Commission's finding that claimant had reached MMI on January 28, 1999, was not against the manifest weight of the evidence and that claimant was not entitled to TTD benefits after that date. We also determined that the Commission could have reasonably concluded that any deterioration in claimant's condition after January 28, 1999, was attributable to claimant's attempts to hinder his recovery by using a device to manipulate his symptoms. See 820 ILCS 305/19(d) (West 1998). We noted that the record disclosed at least 11 separate occasions on or before January 28, 1999, in which claimant was suspected of or observed using a tourniquet-like device on his left forearm, despite warnings from medical personnel that he not engage in such conduct. In addition, we found that the Commission's decision to limit the award of medical expenses to $11,317 was not against the manifest weight of the evidence.

¶ 7 On April 23, 2009, claimant filed two petitions: (1) an amended petition for review under section 8(a) of the Act (820 ILCS 305/8(a) (West 2008)) for an order authorizing extraordinary additional medical expenses and (2) an amended petition for review under section 8(a) of the Act and for penalties and attorney's fees under sections 16, 19(k), and 19(l) of the Act (820 ILCS 305/16, 19(k), 19(l) (West 2008)). In the former petition, claimant sought an evaluation by a neurosurgeon to determine if he is a candidate for installation of a morphine pump to control his pain. In addition, claimant alleged that he was in need of "extensive psychiatric care." Claimant asserted that respondent has refused to pay for such treatment despite the Commission's award of "future palliative and psychological/psychiatric care under Section 8(a)." In the latter petition, claimant

alleged that since the Commission issued its decision in September 2005, he has incurred additional medical expenses for his RSD condition. He further alleged that respondent has refused to pay for these additional expenses despite the Commission's award of future palliative care. Claimant requested that penalties and attorney's fees be assessed against respondent in light of its failure to authorize these additional medical expenses. See 820 ILCS 305/16, 19(k), 19(l) (West 2008). A hearing on claimant's petitions was held on June 15, 2009, before Commissioner Nancy Lindsay.

¶ 8 The only two witnesses to testify at the section 8(a) hearing were claimant and his wife, Melanie Gordon (Melanie). Melanie testified that claimant's left arm swells all the time and that he constantly complains of pain in his left arm. Melanie indicated that since the work accident, three fingers on claimant's left hand are curled towards his palm and he is unable to extend them. Melanie further testified that claimant is "very highly depressed." She stated that claimant does not leave the house, he does not shower, and he does not take care of himself properly. She also related that claimant has anger problems and that he threatens to commit suicide two or three times each month.

¶ 9 Melanie testified that neither she nor claimant have health insurance. She stated that she works 30 hours per week at McDonald's and claimant receives Social Security benefits of $816 per month. She noted that prior to the arbitration hearing, claimant had been treating with Dr. Daniel Hoffman. However, claimant no longer sees Dr. Hoffman because he requires payment at the time of service. As a result, when claimant needs medical care, Melanie takes him to a hospital emergency room. Melanie estimated that since the latter part of 2004, claimant has sought emergency room treatment for his left upper extremity between eight and ten times. Claimant also sees Dr. Patrick Tracy about twice a year. Melanie stated that Dr. Tracy prescribed four medications

to treat claimant's pain and depression. However, she and claimant can only afford two of these medications, Fentanyl patches and Hydrocodone.

¶ 10 Claimant testified that since the arbitrator's decision was issued, his left arm has become worse. Claimant explained that he cannot move three of the fingers on his left hand. He also testified that the pain has spread to his left elbow. He stated that sometimes his left arm will swell all the way up to his left elbow, with the swelling lasting as long as one month. Claimant further testified that his left arm becomes discolored and he experiences "extreme" pain. He stated that his left arm is affected by heat and cold. Claimant further testified that he feels suicidal "all the time" because of the pain he experiences. Claimant denied having any type of mental or psychiatric problems before his injury at work.

¶ 11 Claimant offered into evidence medical bills and records concerning the medical treatment he has received since the arbitration hearing in August 2004. These records reveal that claimant sought treatment at the emergency room at Pekin Hospital on October 12, 2004, January 31, 2007, and February 9, 2007, with complaints related to his left upper extremity. Claimant also presented to the emergency room at St. Francis Hospital on April 6, 2005, October 20, 2005, December 7, 2005, December 16, 2005, August 26, 2008, and January 19, 2009, with complaints of pain and swelling in his left upper extremity.

¶ 12 In addition to the emergency-room visits, claimant was examined by Dr. Hoffman on December 8, 2005. At that time, Dr. Hoffman diagnosed depression and RSD. In a letter to claimant's attorney, Dr. Hoffman noted that claimant's RSD was permanent and irreversible and that his depression was severe. Dr. Hoffman stated that claimant will require antidepressants for the rest

of his life and that he will need pain control. Dr. Hoffman recommended that claimant undergo an evaluation with a neurosurgeon for a pain pump. He noted that if the pain pump is found to be an option, it would cost in excess of $1 million to install and maintain. Dr. Hoffman found that claimant was totally and permanently disabled from ever returning to gainful employment. Claimant also treated with Dr. Tracy on four occasions between January 2005 and June 2007. In a letter to claimant's attorney dated November 19, 2007, Dr. Tracy wrote that claimant "may, at sometime in the future, be a candidate for a subarachnoid intrathecal drug trial and pump implantation should [claimant] fail all conservative measures of treatment." Dr. Tracy further indicated that claimant may be a candidate for a dorsal column stimulator. He noted that both of these treatments, in conjunction with oral medication, had provided relief to other RSD patients who had been unsuccessful with conservative measures. Nevertheless, Dr. Tracy stated that he did not feel a separate evaluation was needed at that time for either of those procedures.

¶ 13 A majority of the Commission granted claimant's section 8(a) petitions in part and denied his request for attorney fees and penalties pursuant to sections 16, 19(k), and 19(l) of the Act (820 ILCS 305/16, 19(k), 19(l) (West 2008)). The Commission noted that in its September 29, 2005, decision, it explicitly ordered respondent to pay for claimant's "future palliative and psychological/psychiatric care under Section 8(a) of the Act." The Commission further noted that respondent did not appeal this aspect of its decision and that this court ultimately affirmed the Commission's decision in its entirety on March 6, 2009. See *Gordon*, No. 3-08-0347WC (unpublished order under Supreme Court Rule 23). In addition, the Commission found that while the records offered at the arbitration hearing contained multiple references to potentially harmful

behavior on claimant's part, the medical records before it at the section 8(a) hearing did not contain any such references. The Commission therefore concluded that the medical expenses claimant now seeks "clearly stem from treatment for [claimant's] RSD and associated depression rather than from any treatment necessitated by injurious practices." Accordingly, based on the wording of its prior decision, claimant's medical records, and the "credible testimony" of claimant and his wife, the Commission granted claimant's amended petition to the extent of awarding $21,186.05 in medical expenses. The Commission denied without prejudice claimant's request for authorization of a neurosurgical evaluation to determine if he is a candidate for a morphine pump or dorsal column stimulator because claimant failed to establish that such treatment was medically necessary.

¶ 14 Commissioner Lindsay dissented. She concluded that claimant failed to meet his burden of proving that the treatment he had undergone since the arbitration hearing was for palliative or psychological care for his work-related RSD or depression. In particular, Commissioner Lindsay determined that the record is devoid of any causation opinion indicating whether the care claimant had undergone subsequent to his arbitration hearing is related to his accident at work or to his injurious practices. On judicial review, the circuit court of Peoria County confirmed the decision of the Commission. This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 On appeal, respondent argues that the Commission's award of post-arbitration medical expenses is against the manifest weight of the evidence. An employee who suffers an industrial accident is entitled to recover only those medical expenses which are reasonable and causally related to the work accident. 820 ILCS 305/8(a) (West 2008); *Zarley v. Industrial Comm'n*, 84 Ill. 2d 380,

389 (1981). The claimant bears the burden of proving, by a preponderance of the evidence, his entitlement to an award of medical expenses under section 8(a) of the Act. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 546 (2007). Issues regarding the causal relationship between medical expenses and a work-related injury are questions of fact for the Commission to resolve. *Max Shepard, Inc. v. Industrial Comm'n*, 348 Ill. App. 3d 893, 903 (2004). A court of review will set aside the decision of the Commission on a factual matter only if it is against the manifest weight of the evidence. *Westin Hotel*, 372 Ill. App. 3d at 546. A decision is against the manifest weight of the evidence when an opposite conclusion is clearly apparent. *Johnson v. Industrial Comm'n*, 278 Ill. App. 3d 59, 63 (1996).

¶ 17 Respondent contends that the Commission erred in awarding more than $21,000 in supplemental medical expenses because claimant presented no new medical evidence or causation opinions at the section 8(a) hearing to indicate whether the palliative care for which he sought payment is related to the injury at work or is simply a consequence of the injurious practices in which he engaged throughout his treatment. However, as the finder of fact, it is the Commission's role to judge the credibility of witnesses and to draw reasonable inferences from competent evidence. *City of Springfield, Illinois Police Department v. Industrial Comm'n*, 328 Ill. App. 3d 448, 452 (2002). Here, a majority of the Commission concluded that the medical expenses claimant requested in the section 8(a) petitions "clearly stem from treatment for his RSD and associated depression rather than from any treatment necessitated by injurious practices." In support of this finding, the Commission cited the wording of its prior decision, claimant's medical records, and the "credible testimony" of claimant and his wife. In particular, the Commission noted that while the medical records offered

at the arbitration hearing in August 2004 contained multiple references to potentially harmful behavior on claimant's part, the records before it at the section 8(a) hearing did not contain any such references. The Commission also stressed that there was no indication in any of the post-arbitration emergency-room records or the records from Dr. Hoffman or Dr. Tracy that claimant has continued to engage in potentially harmful behavior. We conclude that the Commission's finding that the post-arbitration medical expenses awarded were the result of claimant's industrial accident rather than any prior injurious practices was a reasonable inference from the evidence of record. As such, we cannot say that a conclusion opposite to the one reached by the Commission is clearly apparent.

¶ 18 Before concluding, we note that this is a close case. In ruling in claimant's favor, the Commission pointed out that respondent did not offer any new evidence pursuant to section 12 of the Act (820 ILCS 305/12 (West 2008) (allowing the employer to request an employee medical examination)). While cognizant that medical testimony is not necessarily required to establish causation (see *Westinghouse Electric Co. v. Industrial Comm'n*, 64 Ill. 2d 244, 250 (1976)), should claimant seek reimbursement for additional medical expenses in the future, we strongly encourage the parties to obtain expert medical testimony expressly addressing whether such expenses are attributable to claimant's employment (see *University of Illinois v. Industrial Comm'n*, 232 Ill. App. 3d 154, 164 (1992) (specifying that award of medical expenses "should only reflect those services which were determined to be required to diagnose, relieve, or cure the effects of claimant's injury.")).

¶ 19 III. CONCLUSION

¶ 20 For the reasons set forth above, we affirm the judgment of the circuit court of Peoria County, which confirmed the decision of the Commission.

¶ 21 Affirmed.