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2012 IL App (3d) 110779WC-U

Order filed June 20, 2012

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

TIMOTHY JONES,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Appellant,)	Peoria County, Illinois
)	
v.)	Appeal No. 3-11-0779WC
)	Circuit No. 11-MR-27
)	
THE ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION <i>et al.</i> (Hardin Industries, Inc.,)	Michael E. Brandt,
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 findings regarding the claimant's accident, the nature and extent of the claimant's injuries, and its determination of reasonable and necessary medical expenses were not against the manifest weight of the evidence.

¶ 2 The claimant, Timothy Jones, 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 injuries to his lower back sustained on February 8, 2008, while working as a laborer employed by

the respondent, Hardin Industries, Inc. (employer). Following a hearing, the arbitrator found that the claimant sustained a work-related injury and awarded temporary total disability (TTD) benefits from February 9, 2008, through July 22, 2008, and from July 31, 2008, through August 7, 2008. The arbitrator further awarded medical expenses in the amount of \$8,561.07 and permanent partial disability (PPD) benefits to the extent of 7% loss of the person as a whole. The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission). The Commission modified the wording of the decision and struck a single finding of fact, but otherwise affirmed and adopted the arbitrator's decision. The claimant then sought judicial review of the Commission's decision in the circuit court of Peoria County, which confirmed the Commission's ruling. The claimant then brought this appeal.

¶ 3 The claimant raised the following issues on appeal: (1) whether the Commission improperly weighed the medical evidence regarding the claimant's injuries; (2) whether the Commission's findings regarding the location of the claimant's injuries was against the manifest weight of the evidence; (3) whether the Commission's decision not to award medical expenses incurred after August 7, 2008, was against the manifest weight of the evidence; (4) whether the Commission's decision not to award TTD benefits after August 7, 2008, was against the manifest weight of the evidence; and (5) whether the Commission's award of only 7% loss of the person as a whole was against the manifest weight of the evidence.

¶ 4 **FACTS**

¶ 5 It was stipulated by the parties that the claimant, a 42-year-old laborer, sustained an injury on February 8, 2008. The injury occurred when the claimant was knocked down while loading bales of insulation. Immediately after the accident, the claimant went to the emergency

department at Perry Memorial Hospital in Princeton, Illinois. The claimant reported to the attending physician that he twisted his back after being knocked down while loading bales of insulation. He reported complaints of sharp pain in his low back with radiating pain in the left buttock and left leg. The claimant was given a diagnosis of acute back strain, prescribed pain medication, and told to follow up with his treating physician.

¶ 6 The claimant sought treatment from his physician, Dr. Gregg Davis, who diagnosed and treated the claimant for low back pain from February 11, 2008, through April 1, 2008. The claimant gave an initial report of low back pain that radiated into the left leg. Dr. Davis prescribed a regime of physical therapy.

¶ 7 On March 6, 2008, the claimant underwent an MRI, which revealed mild to moderate multi-level degenerative disc disease with no evidence of acute pathologies. Dr. Davis referred the claimant to Dr. Lisa Snyder at the Institute of Physical Medicine and Rehabilitation (IPMR) in Peoria, Illinois. The claimant was first examined by Dr. Snyder on March 27, 2008. Dr. Snyder's treatment notes indicated that the claimant stopped physical therapy the week prior to the visit. Following her examination and review of X-rays and the MRI, she diagnosed lumbar strain with some mild degenerative disc condition. She advised the claimant to resume physical therapy, provided him with light duty restrictions, prescribed pain medication, and recommended diagnostic Electromyogram/Nerve Conduction Study (EMG/NCS) testing.

¶ 8 On April 1, 2008, the treatment notes of Dr. Davis contained the following entry: "Patient demands a referral to a neurosurgeon. Dr. Davis told him he did not need one, but still demanded to be seen." Dr. Davis issued a referral to Dr. Dzung Dinh, a neurosurgeon. The claimant testified that he was never examined by Dr. Dinh. The record, however, reflects that

Dr. Dinh reviewed the March 6, 2008, MRI and recommended a lumbar bone scan and epidural steroid injection at the L4-L5 level. These recommendations were never carried out.

¶ 9 On April 10, 2008, the claimant was again examined by Dr. Snyder. Her treatment notes indicated that the claimant did not want to resume physical therapy or undergo further diagnostic testing until he had consulted with Dr. Dinh. Dr. Snyder recommended a functional capacity evaluation (FCE) and work hardening.

¶ 10 On May 8, 2008, the claimant was examined at the request of the employer by Dr. Michael Dorning, a board-certified orthopedic surgeon. The claimant reported back pain with leg pain radiating mainly into the left leg. Dr. Dorning diagnosed L4-L5 discogenic pain with subjective radiculopathy. He opined that the February 8, 2008, accident was consistent with the claimant's report of pain and that an annular tear at L4-L5 could also be consistent with the accident. In an addendum report, Dr. Dorning also noted a mild disc herniation at L5-S1 that was possibly related to the work injury.

¶ 11 On June 3, 2008, the EMG/NCS test was administered and revealed completely normal results. On June 19, 2008, Dr. Snyder reviewed the EMG/NCS results, reaffirmed her diagnosis of lumbar strain, and continued her recommendation for an FCE and work hardening. She modified the claimant's work restrictions from no lifting greater than 10 pounds to no lifting greater than 20 pounds. The claimant continued physical therapy.

¶ 12 The claimant underwent an FCE on June 26, 2008, which revealed that he was capable of working at a medium physical demand level but was not yet at a heavy physical demand level. It was recommended that he undergo two additional weeks of work hardening at which time he could probably be returned to the heavy physical demand level commensurate with his former

occupation of laborer. The claimant testified that he completed the two additional weeks of work hardening.

¶ 13 On July 17, 2008, the claimant was again examined by Dr. Snyder. She noted that he had completed the additional work hardening and reviewed his diagnostic tests to that date and wrote in her treatment notes: "I can find no objective reason for [the claimant's] ongoing complaints of pain." She recommended a new MRI and indicated that, if the MRI revealed no changes, she would release him to full duty without restrictions.

¶ 14 The new MRI, which was administered on July 21, 2008, showed no changes from the previous MRI of March 6, 2008. As she had previously indicated, since the new MRI revealed no changes, Dr. Snyder released the claimant to full duty effective July 23, 2008. The record indicates that the claimant did not return to work on that date. Instead, on July 31, 2008, the claimant returned to Dr. Snyder's office with complaints of continuing pain. Dr. Snyder's treatment notes contain the following entry for that date: "He is upset that he has returned to work when he is still complaining of ongoing pain. I explained to him that his MRI showed nothing different, his EMG was normal, and I have no objective data for which to further attempt to treat him. *** He insists on seeing somebody else. I will refer him to neurosurgery for evaluation."

¶ 15 Dr. Snyder gave the claimant an off-work slip until he could be examined following her referral to Dr. Daniel Fassett at Associated University Neurosurgeons in Peoria, Illinois. Dr. Fassett examined the claimant on August 7, 2008. According to the claimant's testimony, Dr. Fassett did not conduct an examination but, instead, merely gave him a short talk and advised him to return to work. Dr. Fassett's written examination notes indicated that he conducted a

physical examination of the claimant and reviewed all the diagnostic test results, including the recent MRI of July 21, 2008. In addition, Dr. Fassett noted a mild disc dessication at L3-L4, a slightly more advanced disc dessication at L4-L5, and a disc bulge at L5-S1, with no objective evidence of neural compression pathology. He noted that these conditions most likely were degenerative conditions which predated the February 8, 2008, accident. Dr. Fassett opined that: (1) surgery was not necessary; (2) additional treatment was not necessary; and (3) the claimant was at maximum medical improvement (MMI). He gave the claimant a release to return to his former job duties with no restrictions.

¶ 16 The record indicates that the claimant changed attorneys on August 7, 2008.

¶ 17 The claimant testified that he tried to return to work on the Monday following his appointment with Dr. Fassett. According to the claimant's testimony, he could only work two or three hours before the pain was too intense and he had to quit. He made two additional attempts to work that week, but with similar results. He testified that the pain intensified while he was working, and he sought emergency treatment on August 8, 2008, at Perry Memorial Hospital and on August 11, 2008, at St. Margaret Hospital in Spring Valley, Illinois.

¶ 18 The claimant testified that, on August 18, 2008, he sought a neurological evaluation from Dr. George DePhillips in Joliet, Illinois. He testified that he drove from his home in Peoria, Illinois, to seek an evaluation by Dr. DePhillips in Joliet, although he had no referral to Dr. DePhillips from any of his prior treating physicians. Dr. DePhillips diagnosed degenerative disc disease from L3-L4 through L5-S1, with radiculitis into the lower extremities. He referred the claimant for pain management and ordered him not to work. Dr. DePhillips also opined that the claimant was a likely candidate for a lumbar discography and ordered a new FCE, which showed

that the claimant was capable of only light physical work. Dr. DePhillips then released the claimant to work within the new FCE limitations, which included only occasional lifting of up to 28 pounds and frequent lifting of no more than 17 pounds. In addition, the claimant was restricted to no repetitive bending, twisting, stooping or climbing, as well as no standing for more than 25 minutes at a time and no sitting for more than 45 minutes at a time.

¶ 19 The record further indicates that the claimant was examined at the request of his attorney by Dr. Robert Eilers, who also diagnosed severe lumbar degenerative disc disease from L3-L4 through L5-S1, with radiculitis into the lower extremities. Dr. Eilers opined that the claimant's current condition of ill-being was causally related to his employment and that the work restrictions based upon the new FCE would be permanent.

¶ 20 At the hearing, the claimant testified that he continued to have constant low back pain with radiating leg pain. He further indicated that his pain was aggravated by prolonged walking, sitting, standing, and any small amount of activity. He also testified that he was unable to find work within the restrictions imposed by Dr. DePhillips.

¶ 21 John Budd, the claimant's supervisor, testified that he personally observed the claimant when he returned to work in August 2008. Budd further testified that the claimant was assigned to work in the paint booth, which involved masking off door openings with tape and preparing units and tanks for painting. According to Budd, the claimant's job activities involved no lifting, and he could sit or stand as needed. Budd testified that he observed the claimant spend a great amount of time sitting and not working. The claimant did not mention any complaints of pain to Budd but did tell him that he was going to leave work early that day. Budd testified that, on the second day, he made sure not to assign the claimant any type of jobs that might involve heavy

lifting. He also testified that the claimant did not report any complaints of pain prior to leaving after two or three hours. Budd testified that, on the third day, he assigned the claimant work that permitted him to observe the claimant while he was working. Budd testified that when the claimant could see Budd, he walked with a pronounced limp but, when he did not believe he was being watched, the claimant did not limp.

¶ 22 Based upon the stipulations of the parties, the arbitrator determined that the claimant had incurred an accidental injury arising out of and in the course of his employment. The arbitrator then determined that the claimant was entitled to TTD benefits from February 9, 2008, through July 22, 2008, noting that Dr. Snyder released the claimant to return to work on that date. The arbitrator then added the period July 31, 2008, to August 7, 2008, to the claimant's period of TTD to reflect the fact that Dr. Snyder permitted the claimant to remain off work pending examination by Dr. Fassett. Noting that Dr. Fassett then released the claimant to full duty, the arbitrator terminated TTD on the date of Dr. Fassett's examination, August 7, 2008. The arbitrator also found that medical expenses incurred after August 7, 2008, were not reasonably related to the claimant's February 8, 2008, accident. Lastly, the arbitrator determined that, based upon the opinions of Drs. Snyder and Fassett that the claimant was at MMI and able to resume his full duties without restriction, the claimant had a permanent partial disability to the extent of 7% of the person as a whole.

¶ 23 The Commission affirmed and adopted the arbitrator's decision with corrections. Specifically, the Commission deleted a sentence that read: "The arbitrator finds no basis for the [claimant's] ongoing subjective complaints." The Commission also noted that the PPD award of 7% of the person as a whole was reasonable, given the fact that Drs. Snyder and Fassett both

observed that the claimant had a preexisting degenerative lumbar condition which was likely aggravated by the February 8, 2008, accident. The Commission noted that the two FCE results showed that the claimant was able to work in the light to moderate range, but it also noted that the claimant may have exaggerated the true extent of his injuries.

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

¶ 25 ANALYSIS

¶ 26 1. Weight of Medical Evidence

¶ 27 The claimant first maintains that the Commission erred in failing to adequately consider his complaints of radiating leg pain. The claimant points out that the arbitrator's decision makes no mention of the fact that the claimant complained to his treating physicians that postaccident symptoms included pain radiating into his lower extremities. The claimant posits that this lack of any mention of this particular symptom in the arbitrator's decision, as adopted by the Commission, can only mean that the Commission improperly failed to consider this symptom when evaluating this current condition of ill-being. Similarly, the claimant points to the Commission's modification of the arbitrator's findings by striking the phrase that read "the arbitrator finds no basis for the [claimant's] ongoing subjective complaints." The claimant posits here that the Commission must have intended this as a rebuke of the arbitrator's findings and, therefore, should have found him entitled to additional TTD and medical benefits, as well as a greater degree of permanency.

¶ 28 The findings of the Commission as to the nature and extent of a claimant's injuries is a question of fact for the Commission which will not be reversed on appeal unless the

Commission's determinations are against the manifest weight of the evidence. *Radaszewski v. Industrial Comm'n*, 306 Ill. App. 3d 186 (1999). In order for a finding to be contrary to the manifest weight of the evidence the opposite conclusion must be clearly apparent. *Montgomery Elevator Co. v. Industrial Comm'n*, 244 Ill. App. 3d 563 (1993). 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). 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).

¶ 29 Here, the claimant's argument that the Commission must have erred in its findings when it did not give consideration to his complaints of radiating leg pain does not establish that its decision was against the manifest weight of the evidence. The complaints of radiating leg pain were inconsistent and based primarily upon the claimant's credibility, which the Commission found to be somewhat lacking. In addition, a review of the claimant's own testimony before the arbitrator shows only two fleeting references to leg pain. The EMG/NCS test results, which would have provided some objective evidence of radiating nerve damage, were normal. Moreover, both Dr. Snyder and Dr. Fassett, the claimant's treating and consulting physicians, each determined that the claimant suffered no significant nerve damage. Although these opinions conflict with the opinions of Drs. DePhillips and Eilers, it is well settled that the Commission is uniquely situated to weigh conflicting medical opinion testimony. *International*

Vermiculite Co. v. Industrial Comm'n, 77 Ill. 2d 1 (1979). Given the totality of the record, it cannot be said that the weight given to the medical evidence was erroneous.

¶ 30

2. Location of Injuries

¶ 31 The claimant next maintains that the Commission erred in finding that his injuries were limited to only his lower back. While this argument is a restatement of the issue previously addressed, the claimant argues here that this case should be controlled by the holding in *Pabst Brewing Co. v. Industrial Comm'n*, 167 Ill. App. 3d 753 (1988). In *Pabst*, the appellate court found that the Commission's reliance upon the employer's examining physician's opinion was against the manifest weight of the evidence where that physician gave conflicting and opposite opinions as to the nature and extent of the claimant's injuries. *Pabst*, 167 Ill. App. 3d at 757. The claimant in the instant matter maintains that Drs. Snyder and Fassett similarly gave conflicting opinions regarding the location of the claimant's injuries and, thus, it was against the manifest weight of the evidence for the Commission to rely upon their medical opinions. Our review of the record does not support the claimant's position. Here, the medical opinions of Drs. Snyder and Fassett are consistent and are supported by the diagnostic test results as well as the opinion of Dr. Dorning. Given the weight of the evidence, the Commission's finding that the claimant's condition of ill-being was limited to the lower back and not the lower extremities was not against the manifest weight of the evidence.

¶ 32

3. Medical Expenses after August 7, 2008

¶ 33 The claimant next maintains that the Commission erred in not awarding medical expenses incurred after August 7, 2008. Section 8(a) of the Act entitles a claimant to compensation for all necessary medical, surgical, and hospital services that are reasonably required to cure or relieve

the effects of compensable injuries, and any specific procedures or treatments that have been prescribed by a medical service provider. *Homebrite Ace Hardware v. Industrial Comm'n*, 351 Ill. App. 3d 333 (2004). Whether medical expenses are reasonably required to cure or relieve the effects of a compensable injury is a question of fact for the Commission, and its decision will not be overturned unless it is against the manifest weight of the evidence. *Efengee Electrical Supply Co. v. Industrial Comm'n*, 36 Ill. 2d 450 (1967).

¶ 34 Here, the claimant's argument that the Commission's decision not to award medical expenses after August 7, 2008, was erroneous is based solely upon the premise that the Commission's finding that no causal relationship exists between the February 8, 2008, accident and the claimant's condition of ill-being after August 7, 2008. Since we have already rejected the claimant's argument that the Commission erred in finding that his condition after August 7, 2008, was not attributable to the February 8, 2008, accident, we also reject this contention without the need for further analysis. *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 436 (2011).

¶ 35 4. TTD Benefits after August 7, 2008

¶ 36 The claimant next maintains that the Commission erred in terminating TTD benefits after August 7, 2008. The claimant points to the fact that Drs. DePhillips and Eilers had placed him on light duty restrictions which could not be accommodated by the employer and within which he was unable to obtain employment. The Commission awards TTD benefits for the period of time between the date of the accident and the date the claimant's condition has stabilized. *Caterpillar Tractor Co. v. Industrial Comm'n*, 97 Ill. 2d 35, 44 (1983). The determination as to when the claimant has stabilized is a question of fact, and the Commission's determination regarding the

termination of TTD benefits will not be overturned on appeal unless it is against the manifest weight of the evidence.

¶ 37 Here, the question of when the claimant's condition stabilized was subject to disputed medical opinion testimony. Drs. Snyder and Fassett opined that the claimant reached MMI by August 7, 2008, while Drs. DePhillips and Eilers opined that the claimant had yet to reach MMI by that date. Given the conflicting nature of the medical evidence and the diagnostic testing utilized by Drs. Snyder and Fassett, it cannot be said that the Commission's decision to accept the former and reject the latter was against the manifest weight of the evidence.

¶ 38 5. PPD Benefits

¶ 39 The claimant lastly maintains that the Commission erred in finding that his permanent disability amounted to a 7% loss of the person as a whole. It is well settled that the Commission is uniquely situated to determine the question of the nature and extent of a claimant's permanent injuries, and that determination will not be overturned on appeal unless it is against the manifest weight of the evidence. *Board of Education of the City of Chicago v. Industrial Comm'n*, 96 Ill. 2d 239 (1983). Here, the Commission observed that the claimant was released by his own treating physician to return to full employment without any restrictions. This conclusion was also reached by the claimant's consulting physician. The Commission, acknowledging that the FCE examinations indicated some diminished physical capacity in the light to moderate range, concluded that the claimant suffered some permanent impairment. The claimant's challenge to the Commission's finding is limited to his own subjective complaints and the conflicting medical opinions of Drs. DePhillips and Eilers. Given the conflicting medical opinion testimony regarding the nature and extent of the claimant's permanent injuries and the claimant's credibility

issues, it cannot be said that the Commission's permanency award of 7% loss of the person as a whole is against the manifest weight of the evidence.

¶ 40

CONCLUSION

¶ 41 For the foregoing reasons, we affirm the judgment of the Peoria County circuit court, which confirmed the Commission's decision.

¶ 42 Affirmed.