

2012 IL App (5th) 110455WC-U
Workers' Compensation
Commission Division
Filed: September 20, 2012

No. 5-11-0455WC

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

SCHNUCK MARKETS, INC.,)	APPEAL FROM THE CIRCUIT
)	COURT OF ST. CLAIR COUNTY.
Appellant,)	
)	
v.)	No. 11-MR-133
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, <i>et al.</i> , (EILEEN PAULE,)	HONORABLE
)	STEPHEN P. McGLYNN,
Appellee).)	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 determination that the claimant's condition of ill-being is causally related to her employment is not against the manifest weight of the evidence, and neither is its award of temporary total disability benefits and medical expenses.

¶ 1 Schnuck Markets, Inc. (Schnuck Markets) appeals from an order of the Circuit Court of St. Clair County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission), finding that the condition of ill-being of the claimant's spine is causally connected to her employment and awarding her temporary total disability (TTD) benefits and medical expenses pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)). For the reasons which follow, we affirm the judgment of the circuit court.

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¶ 2 The following factual recitation is taken from the evidence presented at the section 19(b) arbitration hearing conducted on July 22, 2010.

¶ 3 The 43-year-old claimant, Eileen Paule, testified that she had been employed as a grocery checker for Schnuck Markets for 19 years. She typically worked between 28 and 35 hours per week, and the duration of each work shift ranged from four to seven hours. The claimant explained that her job duties required her to lift grocery items from the conveyor belt in order to scan their prices on the scanning window. She also used a keyboard and the cash drawer, which were located in front of her scanning station. The claimant stated that, while she was scanning groceries, she also was required to turn her head to the right to check the monitor and verify that the correct price was being recorded for packaged items, as well as for produce. The monitor was positioned to the right of the claimant and two or three feet behind her scanning station. In addition, she was required to look to the left to ensure that the groceries were bagged properly. The claimant testified that she was constantly moving and twisting her neck and arms to scan grocery items, and she also had to lift and move heavy items across the conveyor belt.

¶ 4 According to the claimant, she experienced some neck pain and stiffness in November 2008 while she was getting ready to go to work. She laid down to rest, and when she awoke, she felt what she described as an "exploding" pain in her neck. She went to the emergency room at Belleville Memorial Hospital, where she was diagnosed with a cervical strain and was discharged with prescribed medications. Thereafter, she followed up with her primary care physician, Dr. James Wade, who diagnosed her with degenerative disc disease. Dr. Wade ordered an MRI of the claimant's cervical spine, which was performed on November 13, 2008. That MRI showed disc bulges at C5-6 and C6-7. She also underwent nerve conduction studies of her upper extremities, the results of which were within normal limits.

¶ 5 Dr. Wade referred the claimant to Dr. Timothy J. Bertelsman, a chiropractor, who treated her

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on two occasions in November 2008. The claimant did not receive any treatment for her neck and upper extremities between November 2008 and May 2009. She continued to work as a checker during those six months. The claimant testified that, although she tried to slow down and be very careful in performing her duties, the pain in her neck and arms got progressively worse while she was working.

¶ 6 On May 2, 2009, the claimant was at work and performing her normal duties as a checker when she developed severe pain and stiffness in her neck with radicular symptoms down her arms. According to the claimant, her symptoms began two or three hours before she started her shift. She reported her condition to her supervisor and was permitted to leave about an hour later, when a replacement checker arrived. The claimant stated that she returned to work the following day, but was unable to complete her shift and had to leave after only one hour due to the pain in her neck and arms.

¶ 7 The claimant sought treatment with Dr. Bertelsman on May 5, 2009. She reported that she was experiencing neck pain that was worse on the left than on the right and that radiated into both arms and hands, with associated numbness and tingling. She also indicated that her condition was related to her employment. Dr. Bertelsman ordered the claimant off work and recommended conservative treatment, consisting of stretching and mobilization of the cervical spine. The treatments, which were administered during approximately 11 chiropractic visits, yielded some improvement in her neck pain. Dr. Bertelsman also referred the claimant for physical therapy. Although she underwent approximately seven physical-therapy sessions, she did not experience much pain relief as a result of those visits.

¶ 8 In June 2009, Dr. Bertelsman referred the claimant to Dr. David G. Kennedy. When she saw Dr. Kennedy on June 10, 2009, the claimant reported that her job as a grocery checker required frequent bending, twisting, and lifting throughout the day. She also described the earlier incident

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in which she experienced an "exploding" pain in her neck and was treated at the emergency room. Dr. Kennedy diagnosed the claimant with chronic cervical pain and took her off work pending further diagnostic testing. Based on the history initially provided by the claimant, Dr. Kennedy did not find a causal connection between her condition of ill-being and her work activities. However, Dr. Kennedy subsequently was given an additional history that included information regarding the onset of the claimant's cervical pain in May 2009 and her treatment by Dr. Bertelsman at that time. Based upon the additional medical history, Dr. Kennedy opined that the acute onset of pain as a result of an employment-related incident on May 2, 2009, could have aggravated the claimant's cervical spine condition to a point where it became symptomatic, ultimately requiring surgical treatment.

¶ 9 The claimant underwent a second MRI on July 28, 2009, which reflected central disc bulging at C5-6 and C6-7, with suspected annular tears at those levels. The claimant continued to treat with Dr. Bertelsman, who kept her off work, and she also continued with her physical therapy sessions.

¶ 10 On October 1, 2009, the claimant was referred to Dr. Charisse H. Barta, a neurologist, who ordered a CT scan of her cervical spine and prescribed medications. Two weeks later, the claimant followed up with Dr. Barta and received refills of her medications.

¶ 11 Thereafter, Dr. Wade referred the claimant to Dr. William Sprich, a neurosurgeon, who first saw her on December 16, 2009. During her initial visit with Dr. Sprich, the claimant reported that she had been experiencing cervical pain with bilateral radicular symptoms for approximately one year and that the pain had intensified in May 2009. She also advised that her job as a grocery checker aggravated her symptoms. Dr. Sprich reviewed the July 2009 MRI and found that it revealed probable bulging discs and annular tears at C5-6 and, to a lesser extent, at C6-7. In addition, x-rays of the claimant's cervical spine showed no mechanical instability, and the results of the EMG/NCS studies were within normal limits.

¶ 12 Dr. Sprich referred the claimant to Dr. Hong-Kai Du for epidural steroid injections. The claimant advised Dr. Du that she suffered from neck and bilateral extremity symptoms since early May 2009 and that her symptoms were secondary to a work injury. Between December 29, 2009, and January 25, 2010, Dr. Du performed three injections at C6-7. Although the claimant's pain was reduced by 50% after the first two injections, the claimant did not experience any significant pain relief following the third injection.

¶ 13 In February 2010, the claimant underwent a discogram at C4-7. She reported concordant neck pain with bilateral shoulder arm pain and numbness at C5-6. She described it as more severe than her usual pain. The post-myelogram CT scan confirmed an annular tear at C5-6 and a right paracentral anterior annular tear and disc bulging at C6-7.

¶ 14 At the request of Schnuck Markets, the claimant was examined by Dr. Marvin Mishkin on March 3, 2010. Dr. Mishkin opined that he could not relate the claimant's subjective complaints of neck pain with any specific activities that occurred on May 2 or May 3, 2009, and that there was no objective evidence to support a recommendation for cervical spine surgery. In a supplemental report, dated July 13, 2010, Dr. Mishkin opined that the claimant's work activities as a grocery checker have not been and will not be a factor in the condition of her cervical spine.

¶ 15 On March 15, 2010, Dr. Sprich performed an anterior discectomy and fusion at C5-6. A discogram was repeated intra-operatively, which confirmed the annular tear at C5-6. Dr. Sprich corrected the annular tear at C5-6, but did not address C6-7 surgically. Following the surgery, the claimant was seen by Dr. Sprich's nurse practitioner on April 26 and June 14, 2010. A subsequent CT scan showed a solid fusion, with caging, at C5-6. In addition, the claimant underwent physical therapy and received a "trigger-point" injection on June 23, 2010.

¶ 16 At his deposition, Dr. Sprich testified that the condition of ill-being in the claimant's cervical spine and the need for surgical treatment were causally related to the repetitive nature of her job as

a grocery checker. Dr. Sprich explained that the turning of the head and neck on a repetitive basis could cause the condition experienced by the claimant. In reaching his conclusion as to causation, Dr. Sprich stated that, after reviewing the MRI examinations performed in November 2008 and July 2009, he determined that the July 2009 study showed a new finding of an annular tear, which was a change in pathology that could have been caused or aggravated by the claimant's work activities.

¶ 17 The claimant testified that, as of the date of the arbitration hearing, she continued to have neck and arm pain, though the surgery provided some relief of her symptoms. She stated that she was scheduled to see Dr. Sprich in a few weeks and wished to continue treating with him. In addition, she continued to perform the home exercises recommended by her physical therapist.

¶ 18 Patti Smith, a manager for Schnuck Markets, testified that she had been so employed for approximately two years and that she occasionally performed the tasks of a grocery checker. According to Smith, the scanning monitor is located about one foot to the right of the scanning window, which is above the cash drawer. Smith stated that a grocery checker has to move his or her head about three inches to the right to see the monitor screen, must look down to see the cash drawer, and also must look to the left to check on the person who is bagging the groceries.

¶ 19 Upon consideration of the evidence presented at the hearing held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2010)), the arbitrator found that the claimant sustained work-related injuries, as manifested on May 2, 2009, which aggravated an underlying, pre-existing condition. The arbitrator further found that the current condition of ill-being in the claimant's cervical spine was causally connected to that employment injury. This determination was premised on the chain of events relating to the claimant's cervical-spine condition and the opinion of Dr. Sprich. In particular, the arbitrator found that the opinion of Dr. Sprich, the claimant's treating physician, was more credible than that of Dr. Mishkin, the expert for Schnuck Markets. The arbitrator explained that Dr. Sprich was aware of the claimant's job activities as a checker and also

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reviewed the MRI studies performed in November 2008 and July 2009, which revealed a change in the pathology in the claimant's cervical spine. In addition, the arbitrator found that the claimant testified credibly that her symptoms became worse when she performed her job activities and that her testimony supported the opinions of Dr. Sprich and the supplemental opinion of Dr. Kennedy.

¶ 20 The arbitrator determined that the claimant was entitled to TTD benefits for 63 4/7 weeks from May 4, 2009, through the date of the hearing on July 22, 2010. The arbitrator also determined that Schnuck Markets was liable for the claimed prior medical expenses, which were reasonable and necessary, and for the claimant's next scheduled appointment with Dr. Sprich.

¶ 21 Schnuck Markets sought review of the arbitrator's decision before the Commission. In a unanimous decision, the Commission affirmed and adopted the findings of the arbitrator and remanded the cause for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 22 Schnuck Markets sought judicial review of the Commission's decision in the Circuit Court of St. Clair County. The circuit court confirmed the Commission's decision, and this appeal followed.

¶ 23 On appeal, Schnuck Markets argues that the claimant failed to prove that the current condition of ill-being in her cervical spine is causally related to her employment as a grocery checker. In support of this argument, Schnuck Markets cites the fact that the claimant had been diagnosed with degenerative disc disease and that she did not report a specific work-related injury, but stated that her cervical pain commenced when she woke up from a nap on November 4, 2008. Schnuck Markets also places significant reliance on Dr. Mishkin's statement that there was no objective evidence to support a recommendation for the claimant's cervical spine surgery, as well as his opinion that the claimant's work activities have not been and will not be a factor in the condition of her cervical spine. We do not believe that any of these considerations warrants reversal

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of the Commission's decision in this case.

¶ 24 Whether a causal relationship exists between a claimant's employment and her current condition of ill-being is a question of fact to be resolved by the Commission. *Cassens Transport Co. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 331, 633 N.E.2d 1344 (1994). In resolving questions of fact, it is the function of the Commission to judge the credibility of the witnesses and resolve conflicting medical evidence. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206-07, 797 N.E.2d 665 (2003). A factual finding by the Commission will not be set aside on review unless it is against the manifest weight of the evidence. *Franklin v. Industrial Comm'n*, 211 Ill. 2d 272, 279, 811 N.E.2d 684 (2004); *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910, 851 N.E.2d 72 (2006). Even in cases where the facts are undisputed, the manifest-weight standard applies if more than one reasonable inference might be drawn from the established facts. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44, 509 N.E.2d 1005 (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*, 365 Ill. App. 3d at 910.

¶ 25 Compensation may be awarded under the Act for a claimant's condition of ill-being even though the conditions of his or her employment do not constitute the sole, or even the principal, cause of injury. *Brady v. Louis Ruffolo & Sons Construction Co.*, 143 Ill. 2d 542, 548, 578 N.E.2d 921 (1991); *Fierke v. Industrial Comm'n*, 309 Ill. App. 3d 1037, 1040, 723 N.E.2d 846 (2000). An injury is considered accidental even though it develops gradually over a period of time as a result of a repetitive trauma, without requiring complete dysfunction, if it is caused by the performance of claimant's job. *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 529, 505 N.E.2d 1026 (1987); *Cassens Transport Co.*, 262 Ill. App. 3d at 330. In order to constitute an accidental injury within the meaning of the Act, the claimant need only show that some act or phase of the employment was a causative factor of the resulting injury. *Fierke*, 309 Ill. App. 3d at 1040.

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A nonemployment related factor which is a contributing cause with the compensable injury in an ensuing injury does not break the causal connection between the employment and claimant's condition of ill-being. *Fierke*, 309 Ill. App. 3d at 1040. The relevant question is whether the evidence supports an inference that the accidental injury aggravated the condition or accelerated the processes that led to the claimant's current condition of ill-being. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 181-82, 457 N.E.2d 1222 (1983); *Freeman United Coal Mining Co. v. Industrial Comm'n*, 318 Ill. App. 3d 170, 173-74, 741 N.E.2d 1144 (2000).

¶ 26 Here, the Commission determined that the claimant sustained accidental employment injuries, as manifested on May 2, 2009, which aggravated an underlying, pre-existing condition, and that the current condition of ill-being in the claimant's cervical spine was causally connected to the employment injuries. This conclusion was predicated on the chain of events relating to the claimant's cervical-spine condition and the opinion of Dr. Sprich. The Commission noted that the opinion of Dr. Sprich was based on a more accurate understanding of the claimant's work activities and was more credible than that of Dr. Mishkin. The record demonstrates that Dr. Sprich testified that the claimant's job duties, which included turning of the head and neck on a repetitive basis, could cause the condition in her cervical spine. Dr. Sprich also stated that the July 2009 MRI revealed a new finding of an annular tear, which was a change in pathology that could have been caused or aggravated by the claimant's work activities. Dr. Sprich concluded that the condition of ill-being in the claimant's cervical spine and the need for surgical treatment were causally related to the repetitive nature of her job as a grocery checker.

¶ 27 It is well established that a finding of a causal relationship may be based upon a medical expert's opinion that an injury "could have" or "might have" been caused by a work-related accident. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 182, 457 N.E.2d 1222 (1983); *Price v. Industrial Comm'n*, 278 Ill. App. 3d 848, 853, 663 N.E.2d 1057 (1996). Where the Commission's

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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 (1982); *University of Illinois*, 365 Ill. App. 3d at 911-12. In this case, the testimony of the claimant and the opinion of Dr. Sprich provide sufficient evidence to support the Commission's finding that the claimant had sustained accidental injuries that were causally connected to her employment. Consequently, we cannot conclude that the Commission's holding in this regard is against the manifest weight of the evidence.

¶ 28 Schnuck Markets also argues that the Commission's awards of TTD benefits and of previous and future medical expenses are against the manifest weight of the evidence. We note, however, that this argument is premised on the contention that the condition of ill-being in the claimant's cervical spine is not causally related to her employment. In light of the fact that we have rejected the contention on which this argument is based, we also reject Schnuck Markets' argument regarding the grant of TTD and medical expenses.

¶ 29 We, therefore, affirm the judgment of the circuit court, which confirmed the Commission's decision and remand this matter back to the Commission for further proceedings.

¶ 30 Affirmed and remanded.