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2013 IL App (1st) 121261WC-U

Order Filed: March 18, 2013

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

ANNIS FISHER, WIDOW OF WALTER FISHER,)	Appeal from
Deceased,)	Circuit Court of
Appellant,)	Cook County
v.)	No. 11L51239
THE ILLINOIS WORKERS' COMPENSATION)	
COMMISSION <i>et al.</i> (Sears, Roebuck & Co.,)	Honorable
Appellee).)	Robert Lopez-Cepero,
)	Judge Presiding.

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

ORDER

- ¶ 1 *Held:* The Commission's finding that claimant failed to prove decedent was exposed to a harmful level of Freon arising out of and in the course of decedent's employment with employer on June 17, 2005, was not against the manifest weight of the evidence.
- ¶ 2 On September 8, 2005, Annis Fisher, the surviving spouse of Walter Fisher, filed an application for adjustment of claim pursuant to the Occupational Diseases Act (Act) (820 ILCS 310/1 to 27 (West 2004)), seeking benefits from decedent's employer, Sears, Roebuck &

Co. After a hearing, an arbitrator found claimant failed to prove decedent was exposed to a harmful level of Freon arising out of and in the course of decedent's employment with employer on June 17, 2005, and denied claimant benefits. Claimant filed a petition for review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). On review, the Commission affirmed and adopted the arbitrator's decision. Thereafter, claimant filed a petition seeking judicial review in the circuit court of Cook County and the court confirmed the Commission's decision.

¶ 3 Claimant appeals, arguing the Commission's finding that she failed to prove decedent was exposed to a harmful level of Freon arising out of and in the course of decedent's employment with employer on June 17, 2005, was against the manifest weight of the evidence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The following factual recitation is taken from the evidence presented at the arbitration hearing on September 22, 2010, and October 21, 2010. Claimant testified the 44-year old decedent worked as a service technician for employer. Decedent serviced and repaired refrigeration and air conditioning units. Decedent brought recovery bags of used Freon home and transferred the Freon from the recovery bags into storage tanks. The transfer procedure required decedent use equipment provided by employer and placed in decedent's garage.

¶ 6 Claimant testified that on June 17, 2005, she observed decedent remove three recovery bags from a work van at approximately 9:30 p.m. Decedent carried the bags into the garage where decedent began the transfer procedure. Decedent worked in the garage until

approximately 11:30 p.m. Claimant testified she walked over to the garage while decedent worked. The garage door was open and she observed decedent standing at the back of the garage, engaged in the transfer procedure.

¶ 7 Claimant testified that at approximately 11:30 p.m., she observed decedent leave the garage, carrying the three empty recovery bags back to the work van. Decedent placed the recovery bags in the van and moved the van from the driveway to a space in front of the house. Decedent came into the house through the kitchen door. Claimant testified she heard a babbling noise coming from decedent. Decedent walked into the living room and collapsed. Decedent was transported to Ingall's Memorial Hospital where he was pronounced dead.

¶ 8 Claimant testified the equipment decedent used in the transfer procedure has remained at the back of the garage since decedent's death.

¶ 9 On cross-examination, claimant testified she did not know decedent had an enlarged heart. She was not aware that on April 1, 2005, decedent underwent an electromyography (EMG), showing a possible left atrial abnormality.

¶ 10 Lawrence Woestman testified on behalf of employer. He has worked as a service technician for employer for 33 years. Woestman repairs refrigerators and regularly handles a refrigerant commonly known as Freon. Woestman volunteered to conduct a transfer procedure using decedent's equipment. On March 23, 2009, Woestman brought two recovery bags filled with Freon to decedent's garage. Woestman used decedent's equipment to transfer the Freon from the recovery bags into the storage tanks. He transferred one bag while the garage door was open and one bag while the garage door was closed. Woestman testified he has performed the

transfer procedure hundreds of times over the course of his 33-year career with employer.

¶ 11 While Woestman conducted the transfer procedure in decedent's garage, David Duffy tested the air quality in the garage. Employer retained Duffy as an expert to determine whether or not a harmful concentration of Freon was present when decedent performed the transfer procedure on June 17, 2005. Duffy testified at his evidence deposition that he is a board-certified industrial hygienist with 30 years of experience. Duffy works for ESIS, Inc., in the Global Risk Control Services Division. Duffy stated that the safe exposure level for Freon is 1000 parts per million, established by the American Conference of Governmental Industrial Hygienists.

¶ 12 Duffy placed a monitoring device in Woestman's breathing zone. Duffy monitored Woestman's exposure to fumes while he performed the transfer procedure. He gathered air samples with the garage doors closed and open. Duffy sent air samples to an environmental health laboratory in Hartford, Connecticut.

¶ 13 With the garage doors closed, test results showed a Freon exposure of less than 1.6 parts per million using the charcoal method of testing, and a Freon exposure of .46 parts per million using the Suma canister method of testing. With the garage doors open, test results showed a Freon exposure of 15 parts per million using the charcoal method of testing, and a Freon exposure of 5.4 parts per million using the Suma canister method of testing. Duffy testified that within a reasonable degree of industrial hygiene certainty, his test of the Freon transfer system was performed in a manner consistent with the standard of practice for other industrial hygienists.

¶ 14 Claimant's retained expert, Christopher Ferrone, testified at his evidence deposition that he works as a mechanical engineer for ARCCA, Inc. Ferrone has been certified in air conditioning systems since 1991. Ferrone inspected decedent's garage and Freon recovery equipment on April 18, 2008. Ferrone did not test the Freon transfer procedure. He was not aware of the concentration levels of Freon that have been determined harmful. Ferrone did not use any air quality monitoring equipment in the garage when he inspected the equipment. In a report dated May 6, 2008, Ferrone noted the Freon hoses in decedent's garage were not correct, there was no ventilation system, and there were some warning labels missing.

¶ 15 On cross-examination, Ferrone agreed his report did not state the equipment in decedent's garage was broken or malfunctioning. He agreed that 1000 parts per million averaged over an eight-hour period is a safe exposure level for Freon. Ferrone would not anticipate leakage from the hoses used in the transfer procedure if the hoses were hooked up properly and working properly.

¶ 16 Dr. Richard Carroll testified at his deposition on behalf of employer. He is board-certified in internal medicine and cardiovascular disease. Dr. Carroll stated that if decedent was exposed to Freon at 15 parts per million, it would not be a factor in his sudden cardiac death. Dr. Carroll testified that within a reasonable degree of medical and cardiovascular certainty, there was no relationship between decedent's employment and his death. According to Dr. Carroll, decedent had an abnormally enlarged heart and a thick left ventricular wall. A thick, abnormal heart can precipitate sudden cardiac disease. Further, Dr. Carroll stated that if decedent were exposed to Freon at the level of 15 parts per million, such exposure would not aggravate his

preexisting cardiovascular condition.

¶ 17 Dr. David Cugell testified at his evidence deposition on behalf of claimant. He is a board-certified pulmonologist. In a written report dated July 7, 2006, Dr. Cugell opined it was highly likely that decedent's death was the result of an externally induced cardiac arrhythmia caused by Freon exposure. Dr. Cugell noted the report of postmortem examination did not indicate decedent suffered a heart attack, a stroke, atrial fibrillation, or kidney disease.

¶ 18 On cross-examination, Dr. Cugell agreed that a Freon level of 14 or 15 parts per million would not cause sudden death.

¶ 19 In the report of postmortem examination, the assistant medical examiner diagnosed decedent with (1) hypertensive cardiovascular disease with cardiomegaly and concentric left ventricular hypertrophy, (2) acute congestion of the visceral organs, (3) hypertensive nephrosclerosis, and (4) clinical history of hypercalcemia with enlarged inferior left parathyroid gland. The assistant medical examiner ascribed decedent's death to hypertensive cardiovascular disease. Decedent did not have Freon present in his body.

¶ 20 After the hearing, the arbitrator found claimant failed to prove decedent was exposed to a harmful level of Freon arising out of and in the course of decedent's employment with employer on June 17, 2005, and denied claimant benefits. The arbitrator noted claimant did not present any evidence establishing decedent's exposure to a harmful level of Freon. On review, the Commission affirmed and adopted the arbitrator's decision. Thereafter, claimant filed a petition seeking judicial review in the circuit court of Cook County and on April 27, 2012, the court confirmed the Commission's decision. This appeal followed.

¶ 21

II. ANALYSIS

¶ 22 Claimant argues the Commission's finding that claimant failed to prove decedent's exposure to Freon on June 17, 2005, was a causative factor in his death was against the manifest weight of the evidence. We disagree.

¶ 23 Whether a causal connection exists is a question of fact for the Commission, and a reviewing court will overturn the Commission's decision only if it is against the manifest weight of the evidence. *Navistar International Transportation Corp. v. Industrial Comm'n*, 331 Ill. App. 3d 405, 415, 771 N.E.2d 35, 44-45 (2002). In resolving questions of fact, it is the function of the Commission 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, 223-24 (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 from the record on appeal. *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).

¶ 24 There is no dispute that decedent suffered a fatal cardiac arrhythmia on June 17, 2005. Claimant is correct that a death is compensable under the Act if the decedent's employment was a causative factor "and the employment need not be the sole causative factor or

even the principal causative factor." *Sears, Roebuck & Co. v. Industrial Commission*, 79 Ill. 2d 59, 66, 402 N.E.2d 231, 235 (1980).

¶ 25 Here, the factual evidence presented at the arbitration hearing was sufficient to support the Commission's determination that decedent's death was not causally related to the June 17, 2005, exposure to Freon. As noted, the American Conference of Governmental Industrial Hygienists has determined that the safe exposure level for Freon is 1000 parts per million. In this case, test results showed, at most, a Freon exposure of 15 parts per million. Dr. Carroll stated that if decedent was exposed to Freon at 15 parts per million, it would not be a factor in his sudden cardiac death, and would not aggravate his preexisting cardiovascular disease. Claimant did not present any evidence establishing decedent's exposure to a harmful level of Freon.

¶ 26 As stated above, it was the function of the Commission to judge the credibility of the witnesses, determine the weight to be given their testimony, and resolve conflicting medical evidence. *O'Dette*, 79 Ill. 2d at 253, 403 N.E.2d at 223-24. Based upon the record before us, the Commission's finding that claimant failed to prove decedent's death was causally related to his employment on June 17, 2005, was not against the manifest weight of the evidence.

¶ 27 III. CONCLUSION

¶ 28 For the reasons stated, we affirm the circuit court's judgment confirming the Commission's decision.