2013 IL App (4th) 111093WC-U

NO. 4-11-1093WC

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MBI, a/k/a Mr. Bult's, Inc.	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Livingston County.
	)	
v.	)	No. 11-MR-27
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, (Noah Brinkman),	)	Honorable
	)	Jennifer Bauknecht,
Appellees.	)	Judge, presiding.

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

ORDER

Held: The Commission's finding that the claimant's condition of ill-being is causally connected to a workplace accident is not against the manifest weight of the evidence

¶ 1 The claimant, Noah Brinkman, was employed as a truck driver by the employer, MBI, a/k/a Mr. Bult's, Inc., when he was involved in a work-related slip and fall accident. The claimant filed a claim under the Workers' Compensation Act (the Act), 820 ILCS

305/1 to 30 (West 2010). The employer, however, maintained that the claimant's condition of ill-being was not causally connected to the workplace accident. After an expedited hearing pursuant to section 19(b) of the Act, 820 ILCS 305/19(b) (West 2010), the arbitrator found that the claimant failed to prove that his current condition of ill-being was causally connected to the workplace accident. The Workers' Compensation Commission (the Commission), however, found in favor of the claimant on the issue of causation. One commissioner dissented. The circuit court entered a judgment confirming the Commission's decision, and the employer now appeals the circuit court's judgment.

¶ 2 BACKGROUND

¶ 3 The claimant began working for the employer as a truck driver in March 2003. He turned 23 in April 2003. The claimant's job duties as a truck driver required him to drive, climb ladders, secure truck loads, pull a tarp over truck loads, and fill out paperwork. Because the claimant drove the truck at landfills, he often drove over objects that resulted in punctured tires. Therefore, he had to change the tires on his truck three or four times a week. Before the employer hired him, in September and November 2004 and in May 2005, the claimant saw a chiropractor for low back pain. The claimant told the chiropractor that he had experienced the pain for approximately five years and that it started after an accident when he was working for a different employer. The evidence in the record established, however, that the claimant was

able to perform all of his work duties for the employer prior to his workplace accident on December 28, 2005. In fact, the employer required him to pass a physical performance test that was designed to test his ability to physically perform the duties of the job.

¶ 4 On the day of the accident, December 28, 2005, the claimant exited the cab of his truck, and the bottom step of his truck "gave way." He slipped and fell on his right heel and "jarred" his back. He fell approximately 14 to 16 inches. The parties agree that this accident occurred and that the accident resulted in injuries to the claimant's low back. The claimant did not work the following day, but was able to resume working shortly after the accident. However, he noticed increasing back pain over time as he continued to work. It became harder for him to get out of bed in the morning, and his sleep was limited because of stiffness after sleeping for more than six hours. He noticed increasing difficulty in changing the tires on his truck. On his "bad days," he received assistance from other employees.

¶ 5 The claimant went back to his chiropractor for low back pain again on January 30, 2006. In February and March 2006, the claimant received medical treatment for conditions that were unrelated to his low back and the accident. The claimant testified that over time, he increasingly spoke with the employer's safety manager about his low back pain, and the safety manager recommended that he seek treatment at OSF St. James Occupational Health Center (OSF). The claimant first went to OSF

for treatment on May 26, 2006.

¶ 6 At OSF, the claimant described the work accident, his back pain prior to the accident, and his symptoms since the accident. A physician's assistant recommended that he treat his low back pain with moist heat and Flexeril. X-rays of the claimant's lumbar spine showed "bilateral pars defects at L5 with Grade 1 spondylolisthesis." At a subsequent visit for treatment at OSF, Dr. Dowden prescribed physical therapy. The physical therapist's June 13, 2006, initial evaluation report states that the claimant's low back pain since the accident had become debilitating. During an office visit at OSF on June 21, 2006, the claimant rated the pain level as an 8 on a scale of 1 to 10. A June 30, 2006, MRI report noted that he had a probable sequestered disc fragment in the right neural foramen at S1 traversing the S1 nerve root, degenerative discs with mild bulging in the left lateral recess, and stenosis at L4-L5, probably compressing the L5 nerve root. The employer sent the claimant to a neurosurgeon, Dr. Shea, for an independent medical examination (IME).

¶ 7 Dr. Shea examined the claimant on July 24, 2006. The claimant described his work accident to the doctor and indicated that he "tried all kinds of things on his own to get better" following the accident but eventually sought treatment at OSF on the recommendation of the employer's safety manager. Following his examination, Dr. Shea concluded as follows:

"The correlation of the subjective complaints to my physical examination and

objective findings do match up. Indeed, the incident [the claimant] described on December 28, 2005 could have caused a herniated disc and his bilateral toe weakness. Obviously, it did not cause the pars defect in his spine. He did have a pre-existing condition with grade I spondylolisthesis at L5-S1."

¶ 8 Dr. Shea did not believe that the claimant was at maximum medical improvement (MMI) and recommended an epidural steroid injection, which was administered on August 7, 2006. The claimant reported no relief from the injection. Dr. Shea prescribed pain medications and referred the claimant to Dr. Nockels for a surgical consultation.

¶ 9 Dr. Nockels examined the claimant on December 7, 2006. Dr. Nockels noted that the claimant's MRI of his lumbar spine showed a right-sided disc herniation at the L5-S1 level. Dr. Nockels concluded that, due to the size of the herniated disc, the claimant would improve with a microdiscectomy. Dr. Nockels imposed multiple work restrictions and referred the claimant to Dr. Prabhu for further surgical evaluation. The claimant was off work as of December 7, 2006.

¶ 10 Dr. Prabhu examined the claimant on January 17, 2007, and he believed that the claimant's herniation at L5-S1 was not likely responsible for the claimant's symptoms because he had only minimal leg pain or radicular symptoms. He prescribed some conservative therapy including aquatherapy and biofeedback. By March 13, 2007, the claimant reported to Dr. Prabhu that he had seen little improvement following eight

or nine conservative therapy sessions.

¶ 11 The claimant underwent another MRI and a lower extremity EMG on March 22, 2007, to rule out radiculopathy. The MRI showed Grade 1 retrolisthesis at L5-S1, a central disc protrusion at L5-S1 with moderate right-sided lateralization without neural foraminal narrowing or stenosis, and a global disc bulge at L4-L5 without apparent effect on the neural structures. The EMG was negative.

¶ 12 On May 7, 2007, the claimant underwent a Myelogram, and Dr. Hijaz documented the following results:

"At L5-S1, there is mild, broad-based posterior disc bulge, which is more prominent on the right than on the left. There is a superimposed small right paracentral disc extrusion which migrates caudally approximately 5 mm. This extrusion results in mild impingement on the traversing right S1 nerve root. There is mild left and minimal right neural foraminal stenosis secondary to extension of the aforementioned disc bulge into the interior portions of the neural foramina."

¶ 13 The claimant underwent a functional capacity evaluation (FCE) on May 31, 2007. The evaluator reported that there were aspects of the evaluation that indicated less than a full effort on the part of the claimant, but if the results were to be taken at their face value, the claimant's "minimal performance" capability included: unrestricted sitting, standing, and motor vehicle operation; bilateral lifting and carrying restricted to fifty pounds; and bending, stooping, lifting, and carrying restricted to a "frequent"

to "occasional" basis. The evaluator believed that the claimant "generally fulfills the requirements" for a job description that had been provided to her.

¶ 14 Following the FCE, the claimant returned to Dr. Shea on June 18, 2007, and reported that he continued to have low back pain and muscle spasms, but the doctor, nonetheless, released the claimant to full duty as of June 19, 2007. Thereafter, the employer terminated the claimant's temporary total disability (TTD) benefits based on Dr. Shea's full-duty release.

¶ 15 The employer stipulated at the arbitration hearing that the claimant was temporarily and totally disabled beginning December 7, 2006, through June 19, 2007, and was entitled to TTD benefits during this period of time.

¶ 16 On February 21, 2008, the claimant consulted with Dr. Lorenz, a board certified orthopedic surgeon, and complained of low back pain and pain radiating down the right lower extremity. Dr. Lorenz obtained lumbar spine x-rays and diagnosed the claimant with "[r]ight S1 radiculopathy with segmented instability at L5-S1 and L4-L5 secondary to a work-related injury." He ordered another lumbar spine MRI and prescribed medications. The MRI showed a right paracentral disc protrusion with annular tear at L5-S1 encroaching upon the descending right S1 nerve root sleeve, and degenerative disc disease at L4-L5 and L5-S1. Dr. Lorenz referred the claimant to Dr. Koehn.

¶ 17 On May 21, 2008, Dr. Koehn examined the claimant and recommended a discogram.

Dr. Koehn performed a three-level discogram and post-discogram CT scan on May 29, 2008, and he noted concordant pain at L4-L5 and L5-S1, with grade 4 tearing at L4-L5 and grade 5 full-thickness tearing "with extra-annular leakage" at L5-S1. After the discogram, the claimant returned to Dr. Lorenz, and he recommended discectomies at L4-L5 and L5-S1 to relieve pressure on the nerve root along with an L4-S1 fusion to stabilize those two segments of the claimant's spine.

¶ 18 Dr. Lorenz testified at his August 27, 2008, deposition about whether the conditions in the claimant's lumbar spine were causally related to the work accident. He opined that the claimant's fall resulted in a sudden loading of his axial spine which resulted in two torn disks and "caused a herniation centrally in one and central to the right side in the other." He testified that the claimant did not anticipate and was "unprepared for" the sudden axial loading of his spine. The doctor believed that the sudden jarring of the accident was a "competent cause" for the claimant's "diskogenic tears and disk herniations with back pain and leg pain." He described the claimant as a young person in good health and a non-smoker with "absolutely no predisposing issues." He took the claimant off work in February 2008 because the claimant's right-sided radicular symptoms affected his brake and pedal handling of his truck and to avoid vibration exposure to the disc herniation.

¶ 19 On September 26, 2008, Dr. Lorenz and Dr. Fronczak performed the discectomies and an L4-S1 fusion with caging and instrumentation. Two weeks after the surgery, the

claimant was experiencing back pain that was surgical in nature, but denied any leg pain. The doctor instructed him to wear a brace. By October 29, 2008, the claimant denied any leg symptoms, and Dr. Lorenz noted that he "moves about quite well." He prescribed physical therapy.

¶ 20 Following physical therapy, the claimant returned to Dr. Lorenz on January 6, 2009, reported "steady gains," and described his pain as a 2 on a scale of 1 to 10. X-rays showed "solid fusion forming posterolaterally and interbody fusion from L4-S1." Dr. Lorenz recommended work conditioning.

¶ 21 A modified FCE in February 2009 showed the claimant to be functioning at a light physical demand level. The evaluator also recommended work conditioning which the claimant attended in April and May 2009. Dr. Lorenz released the claimant to work with maximum lifting of 30 pounds on a frequent basis and maximum lifting of 40 pounds on an occasional basis.

¶ 22 The claimant returned to Dr. Lorenz on June 23, 2009, and complained of back pain made worse by prolonged sitting. X-rays showed that the claimant's disc fusion looked good, and Dr. Lorenz diagnosed the claimant as having a "fusion with painful hardware." He took the claimant off work and referred him to Dr. Koehn for hardware injection. A subsequent cortisone injection into the claimant's surgical hardware provided the claimant with two weeks of pain relief.

¶ 23 The claimant submitted to a second IME conducted by Dr. Shea on July 13, 2009.

The claimant told Dr. Shea that he was taking Vocodin two to four times per day, was unable to work, and had to change positions frequently. Dr. Shea, apparently unaware of the February 2009 FCE, recommended a FCE and indicated that he would await the results of the evaluation before determining whether the claimant could resume working as a truck driver for the employer. With respect to causation, Dr. Shea again opined that the claimant "indeed could have had an injury when he fell on a step on a truck" but that the claimant's "pars defect preceded the injury."

¶ 24 On September 9, 2009, the claimant reported to Dr. Lorenz that he did not have any leg symptoms and that his back pain was tolerable. The claimant wanted the surgical hardware removed, and Dr. Lorenz agreed. In October 2009, a vocational rehabilitation specialist recommended immediate vocational services for the claimant. She opined that returning the claimant to work as a truck driver was not a realistic goal.

¶ 25 On April 10, 2010, the claimant filed a request for an expedited hearing pursuant to section 19(b) of the Act, 820 ILCS 305/19(b) (West 2010). The hearing was conducted on May 18, 2010.

¶ 26 The claimant testified at the May 18, 2010, arbitration hearing that he always seemed to be in discomfort and that prolonged sitting, standing, bending, or twisting irritates his condition. He has to take frequent breaks when performing ordinary tasks, other activities that he once enjoyed are no longer enjoyable, he has difficulty sleeping, and

he uses a heating pad to loosen up his muscles. He testified that he would like to have his surgical hardware removed in an effort to improve his condition.

¶ 27 At the conclusion of the arbitration hearing, the arbitrator found that the claimant failed to prove a causal connection between his December 28, 2005, work accident and his current condition of ill-being. The arbitrator cited what she believed were inconsistencies in the medical records, and she found Dr. Lorenz's causation opinion to be unpersuasive because the claimant "did not advise [the doctor] of his longstanding chronic back pain and prior treatment."

¶ 28 The Commission disagreed with the arbitrator and found that the claimant proved a causal connection between his workplace accident and his condition of ill-being. With respect to the claimant's condition prior to the work accident, the Commission noted that the claimant passed a physical test before the employer hired him and that the test results found him to be capable of performing the required job duties. The Commission found it insignificant that Dr. Lorenz's records contain no mention of any pre-accident back problems because there is nothing in the record to suggest that those problems required anything but conservative care. The Commission also noted that there is no indication in the record that the condition prevented the claimant from performing his job duties. The Commission found the claimant's testimony that he needed the assistance of coworkers to perform some job duties after the accident to be credible.

¶ 29 In its decision, the Commission wrote: "In finding ongoing causation in this case, the Commission relies not only on Dr. Lorenz but also on [the claimant]'s uncontradicted testimony concerning his pre-employment physical and ability to perform a strenuous job for two and a half years prior to the accident, the mechanism of injury, the fact that it was not until after the accident that any medical provider documented radicular complaints, [the claimant]'s testimony concerning the difficulties he encountered and help he obtained after the accident, the aggravating work-related event noted by Dr. Nockels on December 7, 2006, and the causation opinions of Dr. Shea, [the employer]'s selected provider and Section 12 examiner."

¶ 30 One commissioner dissented. The dissenting commissioner noted that the parties' dispute on the issue of causation concerned the claimant's condition of ill-being after June 19, 2007. The dissenter found it significant that Dr. Shea released the claimant back to work on June 19, 2007, with no restrictions and that the claimant returned to work and had no further treatments for several months. The dissenter also agreed with the arbitrator that Dr. Lorenz's opinions on causation were not credible.

¶ 31 The employer appealed, and the circuit court entered a judgment confirming the Commission's decision. This appeal ensued.

¶ 32 ANALYSIS

¶ 33 To establish causation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injury. *Land and Lakes Co.*

v. Industrial Comm'n, 359 Ill. App. 3d 582, 592, 834 N.E.2d 583, 592 (2005). It is not necessary to prove that the employment was the sole causative factor or even that it was the principal causative factor, but only that it was a causative factor. *Republic Steel Corp. v. Industrial Comm'n*, 26 Ill. 2d 32, 45, 185 N.E.2d 877, 884 (1962). Whether a causal connection exists between a claimant's condition of ill-being and his employment is an issue of fact to be decided by the Commission. *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 434, 943 N.E.2d 153, 160 (2011). The Commission's findings with respect to factual issues are reviewed under the manifest weight of the evidence standard. *Id*.

¶ 34 "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." *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315, 901 N.E.2d 1066, 1081 (2009). The appropriate test is not whether this court might have reached the same conclusion, but whether the record contains sufficient evidence to support the Commission's determination. *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866, 923 N.E.2d 870, 877 (2010).

¶ 35 "In resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674, 928 N.E.2d

474, 482 (2009). Resolution of conflicts in medical testimony is also within the province of the Commission. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206, 797 N.E.2d 665, 673 (2003). On review, a court "must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn, nor should a court substitute its judgment for that of the Commission unless the Commission's findings are against the manifest weight of the evidence." *Id*.

¶ 36 Reviewing the record under these standards, we cannot conclude that the Commission's finding with respect to causation is against the manifest weight of the evidence.

¶ 37 There is no dispute in the present case that the claimant suffered a work-related accident and that the accident resulted in low back pain that temporarily and totally disabled the claimant from December 7, 2006, through June 19, 2007. In its brief, the employer "accepted that [the claimant] proved causation, at least for aggravation of a pre-existing condition, while treating with Loyola physicians through September 10, 2007." Accordingly, the dispute in the present case concerns whether the claimant's condition of ill-being after September 2007 is causally related to the workplace accident.

¶ 38 The record contains the opinions from two physicians on the issue of causation, the claimant's treating physician, Dr. Lorenz, and the employer's chosen IME physician,

Dr. Shea. Dr. Lorenz performed surgery on the claimant's low back, and he testified that the claimant's condition of ill-being was causally connected to the workplace accident. He opined that the accident involved a "sudden axial loading on the lumbar spine," and he believed that the jarring accident was a "competent cause" of the claimant's discogenic tears and disc herniations and resulting back and leg pain. He found it significant that the claimant had "absolutely no predisposing issues." This testimony alone, along with the supporting medical records, was more than enough for the Commission to find in the claimant's favor on the issue of causation. Interpretation of medical testimony is particularly within the province of the Commission. *A.O. Smith Corp. v. Industrial Comm'n*, 51 Ill. 2d 533, 536–37, 283 N.E.2d 875, 877 (1972)*; Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566, 394 N.E.2d 1192, 1194 (1979) ("Therefore, a finding of fact by the Commission on this issue, based on any medical testimony or on inferences to be drawn from medical testimony, should be given substantial deference because of the expertise acquired by the Commission in this area.").

¶ 39 Moreover, when Dr. Shea first conducted his IME of the claimant at the request of the employer on July 24, 2006, he concluded that the work accident could have caused a herniated disc. When he examined the claimant again in July 2009, he noted that the claimant's "discography showed that he had concordant pain at L4-L5 and L5-S1," and he again opined that "[i]ndeed, the patient could have had an injury when he fell

on a step on a truck." Accordingly, the opinions of the employer's IME doctor support a finding of causation.

¶ 40 In finding in favor of the claimant on the issue of causation, the Commission expressly relied on Dr. Lorenz and on the claimant's uncontroverted testimony concerning his pre-employment physical testing, his ability to perform the job duties for two and a half years prior to the work accident, the mechanism of injury, the lack of radicular pain complaints prior to the accident, and the causation testimony of Dr. Shea. The record is more than sufficient to affirm the Commission's decision.

¶ 41 The employer attempts to discredit the Commission's findings by noting that the claimant had chiropractic treatments for back pain a few times over a year prior to the 2005 workplace accident, but Dr. Lorenz's records do not mention any pre-accident back problems. However, the claimant correctly notes that it is undisputed that his work-related accident was causally connected to his condition of ill-being from the date of the accident up to September 2007. Because the chiropractic treatments were not fatal to the establishment of a causal connection prior to September 2007, they certainly are not fatal to establishing a causal connection after September 2007.

¶ 42 The employer's own IME physician, Dr. Shea, did not find the existence of prior chiropractic treatments to be a basis to deny a causal connection between the claimant's accident and his treatments. The Commission noted that the claimant required only conservative treatment prior to the accident and that the pre-accident

condition did not prevent him from performing his job duties. The Commission was entitled to find that the claimant's chiropractic treatments for non-radicular back pain over a year prior to the work accident had little to no bearing on the issue of causation.

¶ 43 The employer also notes that Dr. Shea released the claimant back to work in June 2007. However, at the claimant's last appointment with Dr. Shea in September 2007, the doctor prescribed medication (Flexeril) for the following symptoms: "constant muscle spasms, constant pain, lack of mobility[,] and can't get out of bed." The record shows that the claimant then sought treatment with Dr. Lorenz for the first time in February 2008, and Dr. Lorenz opined that the claimant's low back conditions of ill-being were causally connected to the accident. Accordingly, we will not second guess the Commission based on the facts presented to us in the record in this appeal.

¶ 44 CONCLUSION

¶ 45 For the foregoing reasons, we affirm the circuit court's judgment that confirmed the Commission's decision, and we remand the case to the Commission for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 46 Affirmed and remanded.