2013 IL App (4th) 120283WC-U

Workers' Compensation
Commission Division
Filed: April 18, 2013

No. 4-12-0283WC

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

P.F.D. SUPPLY, Appellant, v. ILLINOIS WORKERS' COMPENSATION COMMISSION, et al., (Harold McCoy, Appellee).	))))))))))	Appeal from the Circuit Court of Jersey County No. 11 MR 23 Honorable Eric Pistorious, Judge Presiding.

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

ORDER

Held: The Commission's finding that the claimant's low-back injury arose out of and in the course of his employment is not against the manifest weight of the evidence.

¶ 1 P.F.D. Supply (PFD) appeals from an order of the Circuit Court of Jersey County which confirmed a decision of the Workers' Compensation Commission (Commission), awarding the claimant, Harold McCoy, benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 et seq. (West 2006)), for an arm and low-back injury he allegedly received while in PFD's employ. For the reasons which follow, we affirm the judgment of the circuit and remand this cause to the Commission for further proceedings.

¶ 2 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on January 5, 2011.

¶ 3 The claimant had worked for PFD as a driver and unloader for approximately 9 months, when, on April 7, 2010, he fell off the side of a truck and landed on his right arm, head, and left elbow. He testified that he felt immediate pain in his right elbow and sought emergency room treatment.

¶ 4 The claimant stated that, in the days that followed, he noticed additional pain in his right wrist and shoulder as well as his neck and back. He testified that the back pain began a "[c]ouple weeks" after the accident. Medical records indicate that he first reported the low-back pain to medical providers in May 2010. The claimant said that he suffered no injuries, and performed no strenuous physical activities outside physical therapy, in the two weeks preceding the onset of his low-back pain. He further testified that, other than "chiropractic adjustments," he had never had any low-back pain, or sought any medical treatment for his low back, before his April 7 workplace accident. One physical therapy note, dated May 10, 2010, includes the following handwritten note: "feeling OK today 'even kind of pumped some iron yesterday' (smiling)". In his testimony, the claimant stated emphatically that he had not lifted weights on his own outside his therapy session, and he speculated that the written comment was made in jest.

¶ 5 The claimant sought treatment from chiropractor Dr. James Georgia on June 2, 2010. In a July 2010 letter describing his recent treatment of the claimant, Dr. Georgia summarized the claimant's complaints of low-back pain, which had persisted throughout June 2010. Dr. Georgia opined that the claimant's low-back injury was directly correlated with his workplace injury. In August 2010, Dr. Georgia wrote that the future diagnosis for the claimant's low-back pain was "guarded," and he repeated that the claimant's complaints were related to his workplace injury.

¶ 6 On July 7, 2010, the claimant was released to return to work so far as his elbow injury was concerned, but he testified that he continued to suffer back pain, which became worse as he

worked. On cross-examination, the claimant agreed that he did not tell anyone at work of his low-back pain.

¶ 7 On July 11, the claimant sought treatment for his back at Barnes-Jewish St. Peters Hospital. The claimant testified that the pain he sought treatment for on that date was a progression of his previous low-back pain. A hospital form contained in the record, and signed by the claimant, indicates that his injury occurred on July 11 due to lifting. A report of an x-ray taken on that day states that the claimant has "degenerative changes, most marked at L4-5 and L5-S1" but that x-rays revealed "no definite evidence of acute ossific trauma." The claimant was discharged with a diagnosis of sciatica. He was ordered off of work as of July 12, and he testified that he never worked after that date.

¶ 8 The claimant first saw Dr. Matthew Gornet for treatment of his lower back on July 19, 2010. Dr. Gornet ordered the claimant off of work and recommended an MRI. On September 20, 2010, the claimant underwent that MRI. The MRI report stated that the claimant suffered from degenerative disc disease at L4-5 with "annular disc bulging and a focal *** disc extrusion *** behind the L5 vertebral body." It further noted an annular disc bulge at L5-S1, a mild disc bulge at L3-4, and a minimal disc bulge at L1-2. In a treatment note following a visit that same day, Dr. Gornet wrote that the claimant's MRI "clearly show[ed] what [he] believe[d] [was] a central disc herniation with a resorbing caudal free fragment in [the claimant's] low back." In the same note, Dr. Gornet stated that the MRI findings accounted for the claimant's pain symptoms, and he attributed the claimant's injury to his workplace accident. The claimant stated that his low-back pain persisted as of the time of his testimony.

¶ 9 In his deposition testimony, Dr. Gornet opined that the claimant's low-back condition is causally related to his April 2010 accident. Dr. Gornet attributed the claimant's delayed reporting of his back pain either to the fact that the claimant had been taking pain medication for other injuries sustained in his workplace fall or to the claimant's activities during physical therapy for

his other injuries. Dr. Gornet opined that the claimant had some pre-existing disc degeneration but that the degeneration did not itself cause the disc herniation the claimant suffered, even if it made the herniation more likely. From the September 20, 2010, MRI, Dr. Gornet also identified some resorbing material near the claimant's lumbar spine, and he opined that the presence of that material "shortened the time period [of the onset of the injury] because that wouldn't remain for any length of time." Based on the presence of that material, Dr. Gornet stated that the claimant's back injury must have occurred within 6 to 9 months of the MRI.

¶ 10 On July 26, 2010, the claimant was examined at PFD's request by Dr. Frank Petkovich. Dr. Petkovich also later reviewed additional medical records and supplemented his report on the claimant's condition. In his report, Dr. Petkovich concluded that the claimant's low-back symptoms are not causally related to his April 2010 workplace accident. In Dr. Petkovich's view, the claimant had an "underlying degenerative lumbar disc disease at the L4-L5 and L5-S1 disc space levels," and this degenerative disease was demonstrated on the claimant's September 20, 2010, MRI. Dr. Petkovich acknowledged that the claimant had felt no pain prior to his April 2005 accident, but Dr. Petkovich stated that "there is no question that he had degenerative lumbar disc disease prior to that time." Dr. Petkovich further opined that the claimant had reached maximum medical improvement with respect to his lumbosacral spine injuries. In his deposition testimony, Dr. Petkovich discounted Dr. Gornet's theory that the claimant's delayed reporting of his back pain was due to his taking pain medication; Dr. Petkovich stated that the claimant was still taking some pain medication at the time he reported his back injury. As for Dr. Gornet's theory that physical therapy may have made his symptoms more noticeable, Dr. Petkovich opined that the physical therapy facility the claimant attended had too much experience and expertise to cause such a problem. Also in his deposition testimony, Dr. Petkovich stated that his conclusion, that the claimant had a pre-existing back problem, was supported by medical records indicating that the claimant sought treatment in 2008 for "flank pain." However, in his testimony, the

claimant explained that the "flank pain" was not low-back pain, but instead was closer to his liver area. Dr. Petkovich agreed in his testimony that the claimant's treating physicians responded to the flank pain by ordering CT scans of the claimant's abdomen and pelvis, not of his lumbar spine. With respect to the resorbing material Dr. Gornet identified around the claimant's lumbar spine, Dr. Petkovich opined that such material normally did not form until at least 9 months after an injury.

¶ 11 Following a hearing held pursuant to section 19(b) of the Act ((820 ILCS 305/19(b) (West 2008)), the arbitrator found that the claimant's injuries arose out of and in the course of his employment with PFD, and he awarded the claimant past and future medical expenses as well as temporary total disability (TTD) in the amount of $433.33 per week for 37 2/7 weeks, through the date of the hearing. In finding a causal connection between the claimant's low-back injury and his workplace accident, the arbitrator noted that the claimant complained of the injury shortly after his accident and undertook no strenuous physical activity between the date of his accident and the date his pain began. The arbitrator also found Dr. Gornet's causation opinion to be more credible than that of Dr. Petkovich.

¶ 12 PFD sought review of this decision before the Commission. On September 2, 2011, the Commission issued a ruling affirming and adopting the arbitrator's decision.

¶ 13 PFD sought judicial review of the Commission's decision in the circuit court of Jersey County. On March 1, 2012, the circuit court confirmed the Commission's decision, and this appeal followed.

¶ 14 PFD argues that the Commission erred in finding that the claimant's low-back injury is causally related to his April 2010 workplace accident, and it asks that we set aside all of the benefits the Commission awarded the claimant for that injury. A prerequisite to the right to recover benefits under the Act is some causal relationship between the claimant's employment and the injury suffered. Schwartz v. Industrial Comm'n, 379 Ill. 139, 144-45, 39 N.E.2d 980

(1942). Whether a causal relationship exists between a claimant's employment and his injury is a question of fact to be resolved by the Commission. Certi-Serve, Inc. v. Industrial Comm'n, 101 Ill. 2d 236, 244, 461 N.E.2d 954 (1984). The Commission's determination on a question of fact will not be disturbed 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 (1987). For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. Caterpillar, Inc. v. Industrial Comm'n, 228 Ill. App. 3d 288, 291, 591 N.E.2d 894 (1992).

¶ 15 To argue that the Commission erred in finding causation here, PFD notes that the claimant did not report his low-back pain until several weeks after his April accident. PFD further observes that a note on a physical therapy report prior to his reporting back pain indicated that he had been lifting weights on his own. However, the claimant emphatically denied having lifted weights as indicated in the note, which gives the appearance of having been written in jest. The Commission was presented with this evidence, yet it found that the claimant engaged in no strenuous physical activity between the date of his accident and the date he noticed his back symptoms. This finding rules out the possibility that the claimant's back pain was caused by some traumatic event following his workplace accident. Further, Dr. Gornet explained that the delay in the claimant's reporting could have been attributable to masking of symptoms by pain medication he was taking for other injuries, and the Commission found Dr. Gornet's opinions to be more credible than the contrary opinions of Dr. Petkovich. It is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting evidence. O'Dette v. Industrial Comm'n, 79 Ill. 2d 249, 253, 403 N.E.2d 221 (1980). The Commission was well within its prerogative to credit Dr. Gornet's opinion on this point and lend no weight to the fact that the claimant's report of back pain was delayed.

¶ 16 PFD also argues that the claimant was not a credible witness, because his testimony was impeached by a July 11, 2010, form, signed by him, indicating that his low-back injury had been

caused on July 11 by his lifting at work. That form, however, was very consistent with his testimony that he attempted work on July 11 but had to stop due to back pain.

¶ 17 PFD further argues that the Commission should not have deemed Dr. Gornet more reliable than Dr. Petkovich. PFD's primary point on this credibility issue is that Dr. Gornet testified at one point that the claimant did not experience back pain until four weeks after his accident, when other evidence (and the claimant's testimony) indicated an earlier onset. However, again, the Commission was presented with the evidence, and, even in light of the discrepancy PFD identifies, found Dr. Gornet to be more reliable. Indeed, the Commission had good reason to reach such a determination. Dr. Gornet's opinion relied on the very plausible premise that the claimant, who had experienced no low-back pain prior to his fall, suffered demonstrably severe injuries to his arms and upper back as a result of the fall, and reported low-back pain within a few weeks of the fall, suffered the pain as a result of the fall. Dr. Petkovich's opinion, on the other hand, relies on the premise that a degenerative back condition manifested itself severely and suddenly, by coincidence shortly after the claimant had suffered a traumatic fall.

¶ 18 From the evidence presented to the Commission, we conclude that the Commission's finding, that Dr. Gornet was correct that the claimant's low-back injury was caused by his workplace accident, is not against the manifest weight of the evidence. We, therefore, affirm the judgment of the circuit court, which confirmed the decision of the Commission, and remand the matter back to the Commission for further proceedings pursuant to Thomas v. Industrial Comm'n, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 19 Affirmed and remanded.