2013 IL App (4th) 120896WC-U

Order filed July 12, 2013

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

LIVINGSTON COUNTY SHERIFF'S DEPARTMENT,	)	Appeal from the Circuit Court of the 11th Judicial Circuit, Livingston County, Illinois
Appellant,	)	
	)	Appeal No. 4-12-0896WC
v.	)	Circuit No. 12-MR-33
	)	
THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al*. (Mary Boring, Appellee).	)	Honorable Jennifer H. Bauknecht, Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Hudson, Harris, and Stewart concurred in the judgment.

¶ 1 *Held*: The Commission's findings that the claimant sustained an accidental injury arising out of and in the course of her employment on January 25, 2010, and that her current condition of ill-being was causally related to that accident were not against the manifest weight of the evidence.

¶ 2 The claimant, Mary Boring, filed an application for adjustment of a claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2006)) seeking benefits for injuries to her lower back sustained on January 25, 2010, while she was employed as a correctional officer by the Livingston County Sheriff's Department (employer). Following a

hearing on March 16, 2011, Arbitrator Stephen Mathis found that the claimant proved that she sustained an accidental injury on January 25, 2010, and that there was a causal connection between her current condition of ill-being in the lower back and her employment. The arbitrator ordered the employer to pay temporary total disability (TTD) benefits from January 25, 2010, through the date of the hearing (59 1/7 weeks) and reasonable medical expenses to the date of the hearing totaling $168,443.74. The employer appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission) which, by a vote of two to one, affirmed and adopted the arbitrator's decision. The employer then sought judicial review of the Commission's decision in the circuit court of Livingston County, which confirmed the Commission's ruling. The employer then brought this appeal.

¶ 3 The employer maintains on appeal that: (1) the Commission's finding that the claimant sustained accidental injuries arising out of and in the course of her employment was against the manifest weight of the evidence and contrary to law; and (2) the Commission erred in finding that the claimant's current condition of ill-being was causally related to the alleged accident on January 25, 2010.

¶ 4 FACTS

¶ 5 The claimant testified that she was employed as a correctional officer by the employer. On January 25, 2010, her shift assignment was to check on the "male pods" every one-half hour and that this was an assignment she performed about once or twice a week. She testified that, on January 25, 2010, there were approximately 64 males that were detained at the jail and that they were housed in 7 different units, or pods. She further testified that each unit held up to 16 detainees and that the units were located in a building with 2 flights of steps, with each flight

having 16 steps. The claimant also testified that, every half hour, she would perform a security check in each pod, count the detainees and provide items, such as a razor, toothbrush, etc., to the detainees as requested.

¶ 6 The claimant stated that she began her shift at 7 a.m. and, at approximately 10 a.m., while she was performing her security checks, she received a call on her radio that she needed to report to booking to pat down a female who was being admitted to the jail. She testified that she was the only female officer on duty that shift and that she was the only one who could do the pat-down. She stated that she began to hurry so she could complete her checks on time and, as she descended one of the flights of steps, she missed the last step and twisted her lower back, experiencing an immediate sharp pain in her right lower back.

¶ 7 The claimant testified that, prior to her injury on the steps, she had already gotten two or three radio calls from the booking officer asking her to come quickly to the booking area to pat down the new detainee so that he could end his shift. The claimant testified that she was trying to complete her one-half hour checks on time and get to the booking area to pat down the new detainee and then get back to her normal operations area, all without interrupting her work schedule. She testified that, at the time of her injury, her mind was completely preoccupied with trying to remember what items the detainees had requested, trying to complete her checks on time, and trying to get to booking so that the booking officer could leave.

¶ 8 The employer's witness, Lynn Cahill-Masching, testified that she was correctional administrator since July 2003. She testified that it can sometimes be challenging to complete the "male pod" checks on time and that the claimant was one of the best officers at doing this. She

also testified that it should taken the claimant approximately five to seven minutes to walk over to complete the female pat-down since the booking facility was in a different location.

¶ 9 The claimant reported her injury to her supervisor, Officer Kennedy, who noted the report and referred her to OSF Occupational Medicine (OSF) in Bloomington, Illinois. The claimant was examined by Thomas Moran, a physician's assistant, at OSF. The claimant gave Moran a history of twisting her lower back as a result of missing a step and experienced immediate pain in her lower back. Moran order the claimant off of work and prescribed physical therapy. Moran's treatment notes reported that the claimant could not bend forward greater than 10 degrees or move laterally to the right. In a subsequent report on February 2, 2010, Moran reported that the claimant had some tingling in her posterior right thigh and that her lumbar pain was worse with walking, extension, and lifting. On February 8, 2010, the nursing assessment noted the claimant reported tingling in both legs.

¶ 10 The claimant further testified that she treated with her family doctor, Dr. Bonnie Smith, who subsequently referred her to Dr. Craig Carmichael, a physiatrist, on March 2, 2010. Dr. Carmichael ordered an MRI on March 10, 2010, which was read by Dr. Naveed Yousuf, a radiologist, as having a small focal right paracentral disc herniation at L4-L5. Dr. Carmichael recommended a discogram as a follow up after the MRI. Dr. Carmichael performed right L5 transforaminal epidurals on May 18, 2010, June 21, 2010, and July, 19, 2010. On August 2, 2010, Dr. Carmichael reported that the injections had provided no relief. He referred the claimant to Dr. John Atwater, a spine surgeon.

¶ 11 Dr. Atwater recorded a history on August 16, 2010, that the claimant was at work in January of 2010 when she missed a bottom step going down the steps. The history indicated that

the claimant did not actually fall, but she twisted and caught herself in a manner that put a great deal of pressure on her lumbar spine. Dr. Atwater diagnosed degenerative disc disease at L4-L5 and L5-S1, disc bulge at L4-L5, an annular tear at L4-L5, and right lower extremity radiculitis. Dr. Atwater ordered an EMG on August 25, 2010, which he read as normal. He recommended a two-level fusion on August 31, 2010.

¶ 12 On October 20, 2010, Dr. Atwater issued a written report stating that the claimant sustained a work accident in January of 2010 when she missed a step. He further reported that the claimant had indications of degenerative disc at L4-L5 and L5-Sl. Dr. Atwater recommended a complete provocative discogram at the L4-L5 and L5-S1, as well as the L3-L4. He stated that, if the claimant's condition did not improve and the provocative discogram was positive for axial low back pain, then he would recommend that the claimant undergo a two-level fusion. Dr. Atwater opined that the treatment the claimant had incurred to that date, as well as the potential disc fusion surgery, was necessitated by the accident.

¶ 13 On October 11, 2010, the claimant was examined at the request of the employer by Dr. Babak Lami, a board-certified orthopedic surgeon. In his report, Dr. Lami opined that the claimant's current symptoms were not related to the January 25, 2010, accident. Dr. Lami further opined that the claimant's symptoms were out of proportion to her reported mechanism of injury and that the accident had only resulted in minor back strain. He stated that he did not agree with Dr. Atwater's opinion that the claimant would benefit from a spinal fusion, based upon the diagnostic results available at the time. Dr. Lami suggested that the claimant should undergo a standard discography to see if a spinal fusion was necessary. The claimant testified that, after the examination by Dr. Lami, the employer stopped paying her TTD and medical bills.

¶ 14 Dr. Lami released the claimant to return to work on October 11, 2010. The claimant testified that she was then sent back to Moran for an evaluation on November 4, 2010. Moran placed the claimant on sedentary work restrictions with no driving and no work as an officer. Moran reported that the claimant's condition was not related to her work accident. The claimant requested work within the restrictions; however, in a November 5, 2010, letter, the employer stated that there were no positions available that would accommodate her restrictions. The claimant testified that her employment was terminated the end of December 2010.

¶ 15 On December 10, 2010, Dr. Carmichael performed the discogram which showed that the claimant had severe increases in pain at L4-L5 and L5-S1.

¶ 16 On December 20, 2010, Dr. Atwater performed surgery consisting of a disc decompression at L4-L5 and L5-S1 and a fusion at both levels.

¶ 17 On January 10, 2011, Dr. Carmichael issued a written report in which he stated that, after the January 2010 accident, the claimant had undergone physical therapy and cortisone injections without significant improvement. He stated that he reviewed Dr. Lami's report dated October 11, 2010, which recommended further diagnostic testing before disc fusion surgery. Dr. Carmichael stated that he and Dr. Atwater thought that this was a reasonable suggestion, so they performed it on December 10, 2010. The test showed very significant pain at the L4-L5 and L5-S1 level. Dr. Carmichael observed that the claimant had consistently reported an onset of symptoms when she slipped on the stairs at work in January of 2010 and that he thought the mechanism of injury of twisting was consistent with her diagnosis of discogenic back pain at L4-L5 and L5-S1. Dr. Carmichael opined that there was a causal relationship between the injury and the diagnosis of discogenic back pain.

¶ 18 The claimant testified that she had pulled a muscle in her low back approximately two years before the accident that required rest for approximately two weeks. She also testified that she did not have any back symptoms and that she did not treat for her low back for approximately two years prior to her January 25, 2010, accident. She further testified that, since the January 25, 2010, accident, she noticed a constant pain in her right lower back with pain into her right leg. She stated her pain has improved since her back surgery.

¶ 19 The arbitrator found that the claimant suffered injuries arising out of and in the course of her employment. The arbitrator noted the claimant's testimony that, prior to her twisting injury on the steps, she had already received two or three radio calls from the booking officer, asking her to come to booking to pat down the new detainee so that he could leave. The arbitrator also noted the claimant's testimony that she was trying to complete her one-half hour checks on time and pat down the new detainee without interrupting her work schedule and that, at the time of her injury, her mind was preoccupied with trying to remember what the detainees had requested, trying to complete her checks on time, and trying to get to booking. The arbitrator found that the claimant's work activities caused her to hurry and placed an additional stress on her, which contributed to her twisting injury. The arbitrator also found that this hurried state was necessitated by her employment and placed her at a greater risk than the general public. The arbitrator noted that the circumstances were similar to those in *William G. Ceas & Co. v. Industrial Comm'n*, 261 Ill. App. 3d 639, 637 (1994), wherein the appellate court reversed the Commission finding of an "unexplained fall" and found compensable a claimant's fall down a stairway where the claimant had been in a hurry to deposit an envelope in an express mail box before the deadline for overnight shipping.

¶ 20 The arbitrator also found that: (1) the claimant was required to traverse the two flights of stairways up to 16 times or more a day; (2) the stairways were industrial or institutional in nature and were not used by the general public; and (3) the claimant wore utility shoes that were heavier than her street shoes and an equipment belt that weighed approximately 5 pounds throughout her work day. The arbitrator found that these activities also placed the claimant at a greater risk than the general public.

¶ 21 The Commission, with one dissent, affirmed and adopted the findings by the arbitrator. The dissenting commissioner would have found that the claimant's activities exposed her to a risk no greater than the general public. The employer sought review in the circuit court of Livingston County, which confirmed the decision of the Commission. The employer then filed the instant appeal.

¶ 22 ANALYSIS

¶ 23 The employer first maintains that the Commission erred in finding that the claimant's injuries arose out of and in the course of her employment. Whether an injury arises out of and in the course of employment is a question of fact to be determined by the Commission, and its finding will not be overturned on appeal unless it is against the manifest weight of the evidence. *Certified Testing v. Industrial Comm'n*, 367 Ill. App. 3d 938, 944 (2006). The employer suggests that the claimant's injury was the result of a fall on the stairs and was thus the result of an exposure to a risk no greater than that to which the general public might be exposed. *Brady v. Louis Ruffolo & Sons Construction Co.,* 143 Ill. 2d 542, 548 (1991). The employer further maintains that there is no dispute as to the facts and inferences drawn by the Commission and, thus, this court should subject the Commission's ruling to *de novo* review. We disagree. The

evidence and the inferences to be drawn from the evidence is subject to some dispute; thus, *de novo* review is not appropriate. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107 (1990). Here, the Commission's finding relied upon several factual determinations and inferences. Factual determinations and inferences are against the manifest weight of the evidence where the opposite conclusion is clearly apparent or when no rational trier of fact could reach the same determination based upon the record. *D.J. Masonry Co. v. Industrial Comm'n*, 295 Ill. App. 3d 924, 930 (1988).

¶ 24 It is well established that the mere act of walking down a flight of stairs by itself does not expose a claimant to a risk greater than that to which the general public is exposed. *Nabisco Brands, Inc. v. Industrial Comm'n*, 266 Ill. App. 3d 1103 (1994). However, it is equally well established that the presence of other factors, such as the condition of the stairway (*First Cash Financial Industrial Comm'n*, 367 Ill. Ap. 3d 102, 105 (2006)), whether the claimant was carrying heavy or awkward objects (*Knox County YMCA v. Industrial Comm'n*, 311 Ill. App. 3d 880, 885 (2000)), or whether the claimant believed her job responsibilities required to her to hurry down the stairs (*William G. Ceas & Co.* 261 Ill. App. 3d at 637), can support the Commission's determination that a claimant was exposed to a risk greater than the general public.

¶ 25 Here, the Commission adopted the arbitrator's factual findings that the claimant was in the process of hurrying down the flight of stairs to accomplish the assigned task of patting down a newly arrived female detainee without delaying her assigned duties in the male area of the facility. The arbitrator found it particularly relevant that the booking officer had called the claimant "two or three" times to request her assistance so that he could leave. The reasonable inference to be made from this fact was that the claimant was attempting to hurry so that she

could accommodate the request of the other employee. The arbitrator also credited the claimant's testimony that she was motivated to hurry down the stairs in an effort to maintain her normal duties in the male detention facility. Additionally, the arbitrator credited the claimant's testimony regarding the extra weight caused by her utility belt and inferred that these objects made descending the stairway in a hurry more difficult. Each of these additional factors cited by the arbitrator and adopted by the Commission could reasonably support a finding that the claimant was engaged in activities which placed her at a greater risk of falling on the stairway than the risk to which the general public might be exposed. It cannot be said that the Commission's finding that the claimant suffered accidental injuries arising out of and in the course of her employment was against the manifest weight of the evidence.

¶ 26 The employer next maintains that, even if the claimant sustained an accidental injury arising out of and in the course of her employment, the Commission erred in finding that her current condition of ill-being was causally related to the accident on January 25, 2010. The employer maintains that there were no objective findings that the claimant's current back pain was related to the accident. It further notes that Dr. Lami opined that the claimant's current condition was not causally related to the accident and that the claimant's condition was degenerative in nature.

¶ 27 Whether a claimant has established a causal connection between his current condition of ill-being and his employment is a question of fact to be determined by the Commission, and its determination will not be overturned by a reviewing court unless it is contrary to the manifest weight of the evidence. *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041 (1999). The test of whether a decision of the Commission is contrary to the manifest weight of the evidence is

not whether the reviewing court might reach the opposite conclusion on the same evidence, but whether there is sufficient factual evidence in the record to support the Commission's determination. *Bradley Printing Co. v. Industrial Comm'n*, 187 Ill. App. 3d 98, 103 (1989). Moreover, it is distinctly within the purview of the Commission to judge the credibility of witnesses and resolve conflicts in evidence, assign weight to conflicting medical opinion testimony, and draw reasonable inferences from the evidence. *Beattie v. Industrial Comm'n*, 276 Ill. App. 3d 446, 449 (1995).

¶ 28 Here, the Commission credited the claimant's testimony that she was pain free prior to the January 25, 2010, accident and suffered immediate low back pain after the accident. In addition, Drs. Atwater and Carmichael each opined that the claimant's current condition of ill-being was causally related to the accident. The Commission's reliance on the opinions of Drs. Atwater and Carmichael over that of Dr. Lami is within the purview of the Commission to resolve conflicts in medical opinion testimony. There is nothing in the record which would lead to a conclusion that the Commission's findings and inferences were against the manifest weight of the evidence or in any way contrary to law.

¶ 29 CONCLUSION

¶ 30 For the foregoing reasons, the judgment of the circuit court of Livingston County which confirmed the Commission's decision is affirmed and the matter is remanded to the Commission for further proceedings.

¶ 31 Affirmed and remanded.