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2013 IL App (5th) 120001WC-U

Order filed April 18, 2013

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

RODNEY COX,)	Appeal from the Circuit Court
)	of the Third Judicial Circuit,
Appellant,)	Madison County, Illinois
)	
v.)	Appeal No. 5-12-0001WC
)	Circuit No. 11-MR-42
)	
THE ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION <i>et al.</i> (U.S. Steel,)	Clarence W. Harrison, II,
Appellee).)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The Commission's finding that the claimant failed to prove that his lower back condition and need for lower back surgery was causally related to a work-related accident was not against the manifest weight of the evidence

¶ 2 The claimant, Rodney Cox, filed an application for adjustment of claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2004)) seeking benefits for an injury to his lower back which he allegedly sustained while working for the respondent, U.S.

Steel (employer). After conducting a hearing, an arbitrator found that the claimant had sustained accidental injuries arising out and in the course of his employment on June 11, 2004, and January 17, 2007. The arbitrator found that the latter work injury exacerbated a lower back condition the claimant had sustained in the earlier accident, and that both injuries were causally related to the claimant's need for back surgery. The arbitrator awarded temporary disability (TTD) benefits for a period of 34 and 5/7 weeks and permanent partial disability (PPD) benefits for a loss of 27 ½ % use of the man as a whole.

¶ 3 The employer appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission). Although the Commission agreed that the claimant had sustained two work-related accidents, it unanimously found that the claimant had failed to prove that his condition of ill-being was causally related to either of those accidents. Accordingly, the Commission reversed the arbitrator's causation finding and denied benefits.

¶ 4 The claimant sought judicial review of the Commission's decision in the circuit court of Madison County, which confirmed the Commission's decision. This appeal followed.

¶ 5 **FACTS**

¶ 6 The claimant worked for the employer for approximately 20 years as a bricklayer and a mason. On June 11, 2004, the claimant was using a jackhammer when he lost control of it, slipped, and injured his lower back. Immediately after the accident, the claimant reported pain in his lower back on the left side. Later that day, the claimant was evaluated at the employer's on-site medical facility and was able to continue working afterwards. On June 14, 2004, the claimant visited the company physician, Dr. George Dirkers, complaining of pain in the central lumbar region. At that time, the claimant denied having any pain radiating into his buttocks or

leg. Dr. Dirkers noted a negative straight leg raise and diagnosed the claimant with a lower back strain. Although the doctor released the claimant for work, he told the claimant to return if he experienced any additional problems with his back or legs.

¶ 7 The claimant continued working. He did not seek medical treatment for lower back pain for more than two years. Nor did he lose any time from work due to left-sided back pain during that period.¹ The claimant maintained his position and classification as a bricklayer and mason throughout this period.

¶ 8 On October 17, 2006, the claimant saw his family physician, Dr. Chris Poirot, and complained of increasing pain on the left side of his lower back. Dr. Poirot's medical record of that visit indicates that the claimant told the doctor that he had been experiencing some pain in his lower left back for "at least six months" but he "recall[ed] no specific injury." The claimant also told Dr. Poirot that he "works with heavy block and brick and jackhammer [*sic*]." Although the claimant reported that his back pain was sharp and had been getting worse, he denied feeling any radiating pain to his legs. Dr. Poirot ordered an X-ray of the claimant's spine which showed mild disc narrowing at L5-S1. The claimant subsequently underwent physical therapy, which did not alleviate his pain.

¹ On February 20, 2006, the claimant was treated by a chiropractor for pain on the *right side* of his back. The claimant reported that he had been experiencing this condition for three days. The chiropractor's medical records do not mention the June 11, 2004, work accident. Nor do they suggest that the claimant complained of pain to the left side of his back. During the arbitration, the claimant was unable to recall why he sought treatment from his chiropractor.

¶ 9 Dr. Poirot then ordered an MRI of the claimant's back, which was performed on December 22, 2006. The MRI film revealed a large left paracentral and left lateral disc herniation at L5-S1. The herniated material was compressing the L5 and S1 nerve roots. The MRI also showed mild degenerative changes at other levels of the claimant's spine. During his evidence deposition, Dr. Poirot testified that, after he reviewed the MRI results on December 26, 2006, he instructed his nurse to call the claimant and recommend that the claimant see a neurologist for his back condition.

¶ 10 On January 17, 2007, the claimant had a second accident at work. On that date, the claimant was walking down a flight of stairs in a poorly-lit area near a furnace when he slipped in a mud puddle on the lower landing. The claimant testified that he experienced back pain immediately after this accident. According to the claimant, the pain he experienced after this incident was in the same area as the pain he experienced after the June 11, 2004, accident, but was more severe. He sought treatment from the company clinic and completed an injury report. The claimant testified that he was taken to the hospital after the accident and was off work for approximately three days to a week. However, there are no hospital records from January 2007 in the record.

¶ 11 The claimant returned to Dr. Poirot on January 19, 2007. He told Dr. Poirot about his January 17, 2007, work accident. He also reported that he had seen the company doctor and "someone there had suggested that he may have injured his back *** in June of 2004." The claimant described symptoms of left lower back pain with radiation to the left buttock and posterior upper right thigh, which he characterized as the same pain distribution as before, only worse. He told Dr. Poirot that he had made an appointment to see Dr. David Robson, a

neurosurgeon, "several weeks ago." Dr. Poirot released the claimant to return to work light duty on January 22, 2007.

¶ 12 On January 28, 2007, the claimant completed a health questionnaire for Dr. Robson in which he provided a history of both work accidents. The claimant noted on the questionnaire that one of his job duties was "jackhammering." He listed his hobbies as swimming, boating, fishing, hunting, and canoeing.

¶ 13 On February 8, 2007, Dr. Robson compared the December 22, 2006, MRI with an MRI performed on January 23, 2007. He noted that the film quality of the December 22, 2006, MRI was superior, and that the claimant's disc herniation appeared to have been worse in 2006 than it was in 2007.

¶ 14 On February 14, 2007, the claimant underwent a CT scan that revealed degenerative disc disease and degenerative facet disease at L5-S1 with a disc protrusion effacing the left S1 nerve root. On March 13, 2007, Dr. Robson performed an L5-S1 discectomy and fusion with placement of hardware.

¶ 15 The claimant returned to Dr. Robson for a postsurgical follow-up visit on April 10, 2007. The claimant was healing as expected, and he reported that he had no backache and that his preoperative leg pain was gone. The claimant's recuperation over the next several months went well. Dr. Robson released the claimant for light-duty work on August 22, 2007, and released him to return to work full duty on October 1, 2007.

¶ 16 During his August 27, 2009, evidence deposition, Dr. Poirot testified that he was not the claimant's treating physician in 2004 and that he had no medical evidence to support the claim that the claimant's June 11, 2004, work accident caused his disc herniation, which was first

detected during the December 2006 MRI. He further testified that the pain complaints the claimant described on October 17, 2006, were consistent with the findings on the December 22, 2006, MRI. Dr. Poirot acknowledged that the claimant had degenerative changes in his spine.

¶ 17 Moreover, although Dr. Poirot testified that the claimant's January 17, 2007, work accident exacerbated the claimant's pain symptoms and required him to take time off work, he conceded that he did not know whether that accident aggravated the claimant's preexisting disc herniation. He also admitted that he could not say to a reasonable degree of medical certainty that the January 17, 2007, accident made the claimant's need for surgery more urgent because the claimant had already consulted a neurosurgeon at the time of that accident. Further, Dr. Poirot acknowledged that if the January 2007 MRI indicated no worsening of the claimant's December 2006 disc pathology, that fact would "tend to lend support to the argument that the [January 17, 2007] slip and fall was a temporary exacerbation versus a deciding fact in getting the surgery."

¶ 18 The employer's Section 12 examiner was Dr. Michael Chabot, an osteopathic orthopedic surgeon. Dr. Chabot reviewed the claimant's medical records and, on September 18, 2008, he examined the claimant. During his subsequent evidence deposition, Dr. Chabot testified that the claimant told him that his symptoms "waxed and waned" for approximately two years following the June 11, 2004, work accident. However, according to Dr. Chabot, the claimant admitted that Dr. Poirot did not treat him for back pain during this period. Dr. Chabot testified that the claimant said that his current symptoms of back pain developed when he was walking down a flight of stairs in December 2006, but the claimant "could not recount any specific injury."

¶ 19 Dr. Chabot also compared the December 22, 2006, and January 23, 2007, MRI films. He found "no significant difference" between the two studies. In Dr. Chabot's opinion, both MRI

scans showed a narrowing of the disc space and a left-sided protrusion at L5-S1, and there was no evidence that the claimant's lumbar condition had worsened structurally in the interval between the two scans.

¶ 20 Dr. Chabot opined that the claimant's June 11, 2004, work accident did not lead to the claimant's disc herniation or to the surgical repair of that herniation. In support of this opinion, Dr. Chabot noted that Dr. Dirkers diagnosed the injury as a strain, and the claimant continued working and did not make any future complaints of back pain to Dr. Dirkers (who had instructed the claimant to return if he experienced symptoms). Dr. Chabot concluded that the symptoms the claimant experienced after the June 11, 2004, work injury resolved shortly thereafter.

¶ 21 Dr. Chabot also opined that the back and leg complaints for which the claimant sought treatment in October 2006, his disc herniation, and his subsequent back surgery were unrelated to the claimant's January 17, 2007, work accident. He concluded that the claimant had developed a disc herniation by December 2006, several weeks prior to the January 2007 work accident.² By that time, the claimant was already restricted to light-duty work, scheduled to see a neurologist, and on narcotic pain medication as a result of his chronic, persistent pain complaints. Accordingly, Dr. Chabot opined that, at most, the January 2007 incident caused a minor aggravation of the claimant's pain symptoms.³ However, in Dr. Chabot's opinion, the surgery

² As noted, Dr. Chabot opined that this herniation was unrelated to the 2004 accident.

³ Dr. Chabot noted that, despite the claimant's complaints of increased pain after the January 17, 2007, accident, he was able to continue working light duty after that accident and did so until Dr. Poirot took him off work pending his evaluation by Dr. Robson.

was performed due to pain symptoms and a disc pathology that predated the January 17, 2007, work accident.

¶ 22 The claimant filed workers' compensation claims, alleging that his June 2004 and January 2007 work accidents were causally related to his disc herniation and subsequent back surgery.

¶ 23 During the arbitration hearing, the claimant testified that he was frequently unable to perform certain work tasks after his June 11, 2004, accident. He claimed that his former supervisor, David Sues, informally accommodated his limitations by assigning him lighter jobs and reserving heavier jobs for employees who could perform those tasks. The claimant testified that Sues continued making these accommodations until the claimant's pain increased to the point that he was unable to perform any of his job duties.

¶ 24 Sues testified that the claimant complained about his back pain frequently between June 2004 and March 2007. He confirmed that he would assign lighter jobs to any employee suffering from a limiting condition, including the claimant. Sues was unable to specify how many times each month he accommodated the claimant in this way. According to Sues, the claimant would come to work and say that he might need to go home or go to the dispensary because of his back. Sues would tell the claimant not to worry and that he would take care of it. On cross-examination, Sues testified that he could not remember the claimant ever asking for light duty. He testified that he would notice the claimant's pain behaviors and assign him easier tasks "for his own good." However, Sues never sent the claimant home or took him off work entirely. Although he testified that the claimant was able to work his normal duties on some days, Sues stated that the claimant never worked with a jackhammer after his June 11, 2004, accident.

¶ 25 The arbitrator found that the claimant sustained work-related injuries to his lower back on June 11, 2004, and on January 17, 2007. He also found that the claimant's need for back surgery was causally related to both injuries. Specifically, the arbitrator concluded that the January 2007 accident "exacerbated the low back condition sustained in the earlier incident of 6/11/04," thereby "caus[ing] the need for surgery." Accordingly, the arbitrator awarded TTD benefits and PPD benefits for the loss of 27 ½ % man as a whole.

¶ 26 The employer appealed the arbitrator's decision to the Commission. The Commission affirmed the arbitrator's finding that the claimant had sustained two work-related accidents. However, the Commission unanimously found that the claimant had failed to prove that his current condition of ill-being was causally related to either of those accidents.

¶ 27 Regarding the June 2004 accident, the Commission noted that the company doctor diagnosed that injury as a back sprain and the claimant reported feeling much better three days later. Moreover, the claimant did not pursue any further medical treatment for back pain until more than two years later, even though the company doctor had urged him to return if he experienced any continuing symptoms. The Commission concluded that this "extensive gap in treatment" and the other medical evidence indicated that the claimant's condition had completely resolved prior to October 2006.

¶ 28 The Commission found the claimant's and Sues's testimony that the claimant experienced persistent low back pain from June 2004 through October 2006 to be "unpersuasive" and "unreliable." The Commission stressed that the claimant was not under any work restrictions during this period, and it noted that Sues testified that he regularly accommodated other employees (not just the claimant) in rotating job responsibilities. Moreover, the Commission

observed that Suess's and the claimant's testimony that the claimant never used a jackhammer after the June 11, 2004, accident was refuted by other record evidence.

¶ 29 The Commission also found that the claimant failed to prove that his current condition of ill-being was causally connected to the January 17, 2007, accident. It reasoned that the medical evidence demonstrated that the claimant developed a herniated disc after the June 11, 2004, accident, but prior to the January 17, 2007, accident. It found that the claimant's lower back condition had deteriorated markedly by the end of 2006, necessitating both physical therapy and an MRI, which revealed the herniated disc. The Commission observed that Drs. Chabot and Robson "both noted no significant change between the December 22, 2006, MRI and the January 23, 2007, MRI, indicating that the January 17, 2007, accident did nothing to increase the severity of [the claimant's] pre-existing disc herniation."

¶ 30 Accordingly, the Commission reversed the arbitrator's causation finding and vacated the arbitrator's award of benefits.

¶ 31 The claimant sought judicial review of the Commission's decision in the circuit court of Madison County, which confirmed the Commission's decision. This appeal followed.

¶ 32 ANALYSIS

¶ 33 To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). However, a work-related injury "need not be the sole causative factor, nor even the primary causative factor, as long as it was *a* causative factor in the resulting condition of ill-being." (Emphasis in original.) *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Even if an employee has a preexisting condition which makes him more

vulnerable to injury, recovery will not be denied as long as it can be shown that his employment was also a causative factor. *Id.* Accordingly, an employee may recover under the Act if he shows that he suffered a work-related accident that aggravated or accelerated a preexisting condition. *Id.*

¶ 34 In resolving disputed issues of fact, including issues related to causation, it is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041 (1999). We will overturn the Commission's causation finding only when it is against the manifest weight of the evidence. A factual finding is against the manifest weight of the evidence if the opposite conclusion is "clearly apparent." *Swartz v. Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086 (2005). The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002). "A reviewing court will not reweigh the evidence, or reject reasonable inferences drawn from it by the Commission, simply because other reasonable inferences could have been drawn." *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006).

¶ 35 Applying these standards, we cannot say that the Commission's conclusion that the claimant failed to prove that his lower back condition and need for back surgery is causally related to his work-related accidents was against the manifest weight of the evidence. Dr. Chabot opined that the claimant's June 11, 2004, work accident resulted in a back strain that resolved

relatively quickly and was not causally related to the claimant's disc herniation and need for back surgery in early 2007. There is support for these opinions in the record. The claimant did not seek medical treatment for lower back pain for more than two years after the June 11, 2004, accident. He continued working without restrictions and maintained his position as a bricklayer and mason throughout that period. Moreover, Dr. Poirot's medical records indicate that, when the claimant finally sought treatment for back pain on October 17, 2006, he told Dr. Poirot that he had been experiencing some pain in his lower left back for "at least six months" but he "recall[ed] no specific injury." At that time, the claimant did not connect his back pain with the June 11, 2004, accident or mention that he had been experiencing back pain continually since that accident. Similarly, Dr. Chabot testified that the claimant told him in 2008 that his current symptoms of back pain developed when he was walking down a flight of stairs in December 2006, but the claimant "could not recount any specific injury."

¶ 36 Dr. Chabot also opined that the back and leg complaints for which the claimant sought treatment in October 2006, his disc herniation, and his subsequent back surgery were unrelated to the claimant's January 17, 2007, work accident. Once again, the medical evidence supports Dr. Chabot's opinion. The December 22, 2006, MRI showed that the claimant had already developed a disc herniation several weeks before the January 2007 accident. When Drs. Chabot and Robson each compared the December 2006 MRI film with the results of a subsequent MRI taken days after the January 17, 2007, accident, neither doctor found any evidence suggesting that the January 17, 2007, accident caused or in any way worsened the claimant's preexisting disc herniation. Dr. Chabot found "no significant difference" between the two MRI studies, and Dr. Robson actually found that the claimant's disc herniation appeared to have been worse in 2006

than it was in 2007. Moreover, several weeks prior to the January 17, 2007, accident, the claimant was already restricted to light-duty work, scheduled to see a neurologist, and on narcotic pain medication as a result of chronic, persistent complaints of lower back pain. Further, although the claimant complained of worsening pain after the January 17, 2007, accident, he continued working light duty from January 22, 2007, until Dr. Poirot took him off work pending his evaluation by Dr. Robson. Accordingly, although there is evidence suggesting that the January 2007 accident may have caused a minor aggravation of the claimant's pain symptoms, there is ample evidence supporting Dr. Chabot's conclusions that: (1) the January 17, 2007, accident did not aggravate the claimant's disc herniation or render the need for surgery to correct that condition more urgent; and (2) the claimant's back surgery was performed to correct a disc pathology and pain symptoms that predated the January 17, 2007, work accident.

¶ 37 The claimant did not present any expert medical testimony that rebutted Dr. Chabot's opinions. Dr. Poirot testified that he was not the claimant's treating physician in 2004 and that he had no medical evidence to support the claim that the claimant's June 11, 2004, work accident caused his disc herniation. He also acknowledged that the claimant had degenerative changes in his spine. Moreover, although Dr. Poirot testified that the claimant's January 17, 2007, work accident exacerbated the claimant's pain symptoms, he conceded that he did not know whether it aggravated the claimant's preexisting disc herniation, and he admitted that he could not conclude that it made the claimant's need for surgery more urgent because the claimant had already consulted a neurosurgeon before the January 2007 accident. Importantly, Dr. Poirot acknowledged that, if the January 2007 MRI indicated no worsening of the claimant's December 2006 disc pathology (as Drs. Robson and Chabot each concluded), that fact would "tend to lend

support to the argument that the [January 17, 2007] slip and fall was a temporary exacerbation versus a deciding fact in getting the surgery." Thus, when considered in light of the other medical evidence, Dr. Poirot's opinion actually supports the conclusion that the claimant's January 17, 2007, accident was unrelated to his disc herniation and need for back surgery.

¶ 38 In response, the claimant points to: (1) his own testimony that he experienced pain persistently after the June 11, 2004, accident and that Sues repeatedly accommodated his inability to perform his job; (2) Sues's testimony that the claimant complained of back pain frequently between June 2004 and March 2007 and that Sues frequently accommodated the claimant by assigning him easier tasks; and (3) several of the employer's documents (including records that the company was required to keep for the Occupational Safety and Health Administration (OSHA)) which appear to relate the claimant's January 17, 2007, injury and subsequent back pain to the June 11, 2004, accident. However, the Commission found the claimant's and Sues's testimony on these matters "unpersuasive" and "unreliable." Credibility determinations are within the Commission's province (*Hosteny*, 397 Ill. App. 3d at 675), and we will not disturb the Commission's conclusions on these matters, particularly where, as here, there is record evidence contradicting some of the testimony at issue.⁴

⁴ Sues testified that the claimant never worked with a jackhammer after his June 11, 2004, accident. However, when the claimant saw Dr. Poirot in October 2006, he told the doctor that he "works with *** jackhammer[s]." Approximately three months later, the claimant completed a health questionnaire for Dr. Robson in which he identified "jackhammering" as one of his job duties.

¶ 39 Moreover, contrary to the claimant's assertion, most of the employer's documents cited by the claimant do not admit any connection between the claimant's June 11, 2004, work accident and his back pain or need for surgery in late 2006 and 2007. Indeed, many of those documents could not possibly suggest such a connection because they are dated around the time of the first accident. Other, later documents cited by the claimant are careful not to draw such a connection. Although the OSHA documents cited by the claimant arguably suggest such a connection, the Commission was entitled to credit the medical evidence and the expert medical opinions of Drs. Chabot and Robson over the statements contained in these documents.

¶ 40 CONCLUSION

¶ 41 For the foregoing reasons, we affirm the judgment of the Madison County circuit court, which confirmed the Commission's decision.

¶ 42 Affirmed.