

NOTICE

Decision filed 10/29/13. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2013 IL App (5th) 130064WC-U

NO. 5-13-0064WC

IN THE APPELLATE COURT

OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

WORKERS' COMPENSATION COMMISSION DIVISION

CHRIS TURNER,)	Appeal from the
Appellant,)	Circuit Court of
v.)	St. Clair County.
THE ILLINOIS WORKERS' COMPENSATION)	No. 12-MR-282
COMMISSION <i>et al.</i> (Belleville Shoe)	
Manufacturing Company, Appellees).)	Honorable
)	Robert Haida,
)	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 decision not to award claimant benefits pursuant to section 8(d)(2) of the Act (820 ILCS 305/8(d)(2) (West 2008)), in addition to benefits pursuant to section 8(e)(12) of the Act (820 ILCS 305/8(e)(12) (West 2008)), was not against the manifest weight of the evidence.

¶ 2 On January 12, 2009, claimant, Chris Turner, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2008)), seeking benefits from the employer, Belleville Shoe Manufacturing Company, for repetitive trauma injuries suffered to his right leg. After a hearing, an arbitrator awarded claimant benefits pursuant to section 8(e)(12) of the Act (820 ILCS 305/8(e)(12) (West 2008)), because the injuries

sustained caused 7.5% loss of use of claimant's right leg. Claimant filed a petition for review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission), arguing the arbitrator erred because he did not award claimant benefits pursuant to section 8(d)(2) of the Act (820 ILCS 305/8(d)(2) (West 2008)), in addition to the scheduled award pursuant to section 8(e)(12) (820 ILCS 305/8(e)(12) (West 2008)). On review, the Commission affirmed and adopted the arbitrator's decision. Thereafter, claimant filed a petition seeking judicial review in the circuit court of St. Clair County. On January 14, 2012, the court confirmed the Commission's decision.

¶ 3 Claimant appeals, arguing the Commission erred by failing to award claimant compensation pursuant to section 8(d)(2) of the Act (820 ILCS 305/8(d)(2) (West 2008)), in addition to compensation pursuant to the schedule of specific losses set forth in section 8(e) of the Act (820 ILCS 305/8(e) (West 2008)). We affirm.

¶ 4 I. BACKGROUND

¶ 5 The following factual recitation is taken from the evidence presented at the arbitration hearing on October 12, 2011. The 53-year-old claimant testified that he performed piecework for the employer. Claimant began work for the employer on September 11, 1980. Claimant described his job as requiring him to repetitively press a pedal with his right foot. Claimant testified that he began to experience pain in his right leg up into his groin. On December 4, 2008, claimant sought treatment with his family practice physician, Dr. Wallace Able, who diagnosed right leg chronic symptomatic varicose veins and referred him to Dr. Hans Moosa, a vascular surgeon. Claimant had not previously had any problems with varicose veins.

¶ 6 On December 22, 2008, Dr. Moosa diagnosed claimant with right lower extremity

symptomatic varicose veins and recommended claimant undergo a varicose vein excision from the groin down to the ankle. On July 10, 2009, Dr. Moosa performed an excision of the right greater saphenous vein with a stab phlebectomy.

¶ 7 On August 17, 2009, Dr. Moosa noted claimant complained of pain in his right leg with induration around the right thigh and ankle. Dr. Moosa expected the induration to resolve in the next several weeks. On September 29, 2009, Dr. Moosa released claimant without restriction.

¶ 8 On January 18, 2010, claimant returned to Dr. Moosa complaining of right leg residual edema and superficial cutaneous pain along the right inner thigh. Dr. Moosa diagnosed superficial dysesthesia of the right groin suggesting possible injury to the iliofemoral or ilioinguinal nerve. Dr. Moosa recommended local cream for pain relief and nerve blocks if that treatment was not successful.

¶ 9 On February 14, 2011, claimant sought treatment with Dr. Robert Hagan of the Neuropax Clinic in St. Louis. Claimant complained of pain in his deep groin and proximal to his medial thigh. Dr. Hagan noted swelling in the thigh. He performed a diagnostic blockade of the distal area of the ilioinguinal and iliofemoral nerve regions. Claimant experienced significant relief secondary to the blockade. Dr. Hagan diagnosed an irritation to the ilioinguinal and possibly the iliofemoral nerve branches.

¶ 10 Dr. Hagan recommended claimant return in two weeks for a block of the ilioinguinal nerve closer to the anterior and superior iliac spine. Dr. Hagan advised that claimant could consider surgical denervation if the blocks and a steroid injection did not resolve his pain.

¶ 11 When claimant returned to Dr Hagan on March 24, 2011, Dr. Hagan recommended a right groin denervation. Dr. Hagan explained that postoperatively claimant would experience

suprapubic, lateral testicle, and medial thigh numbness. Dr. Hagan performed the right ilioinguinal and iliohypogastric nerve resection on April 20, 2011.

¶ 12 On May 31, 2011, Dr. Hagan noted minimal residual swelling, good incision healing, and no appreciable tenderness.

¶ 13 Claimant last saw Dr. Hagan on August 9, 2011. Dr. Hagan noted that claimant had done extremely well postoperatively. His original groin pain was completely resolved and he had returned to full-duty status. Claimant had good strength in the lower abdomen and proximal thigh, and full range of motion around the hip. His incision was healing well, with minimal swelling and maturing scar tissue. Dr. Hagan placed claimant at maximum medical improvement and discharged him from care without restriction.

¶ 14 At the arbitration hearing, claimant testified that his condition improved following the surgical denervation. When reminded Dr. Hagan told him that postoperatively he would experience suprapubic, lateral testicle, and medial thigh numbness, he agreed that he was numb in those areas.

¶ 15 Claimant admitted that he had no more pain, his right leg was "alright," and Dr. Hagan placed no restrictions on his activities. Claimant testified that he drives a Cadillac and an Explorer; he fishes every now and then; and he mows his lawn. Claimant complained of swelling in his upper thigh into his groin, which occasionally bothers him. The arbitrator viewed claimant's leg and noted an area of swelling on the upper right thigh approximately five to six inches in length which was raised about one inch.

¶ 16 Based on the foregoing evidence, the arbitrator issued his decision, stating:

"The Arbitrator finds that following the accident petitioner underwent two

surgical procedures: the excision of right leg varicose veins on July 10, 2009; and, the resection of the right ilioinguinal and iliohypogastric nerves on April 20, 2011. On January 18, 2010, Dr. Moosa found petitioner did well following his varicose vein surgery, but he had subsequently developed edema in the right leg and pain in the right inner thigh which required further care. On August 9, 2011, Dr. Hagan found petitioner had done extremely well following his nerve resection: his original groin pain was completely resolved; he had full range of motion about the hip; he demonstrated good strength in the lower abdomen and proximal thigh; and, he had minimal swelling in the area of the incision.

Although petitioner complained of continued numbness in the right groin area, and exhibited a raised area on his right upper thigh, his leg pain was gone, he was subject to no restrictions, and he was performing the normal activities of daily life without difficulty.

Accordingly, the Arbitrator finds petitioner sustained 7.5% loss of use of his right leg."

¶ 17 Claimant filed a petition for review of the arbitrator's decision before the Commission, arguing the arbitrator erred because he did not award claimant benefits pursuant to section 8(d)(2) of the Act (820 ILCS 305/8(d)(2) (West 2008)), in addition to the scheduled award pursuant to section 8(e)(12) (820 ILCS 305/8(e)(12) (West 2008)). On review, the Commission affirmed and adopted the arbitrator's decision. Thereafter, claimant filed a petition seeking judicial review in the circuit court of St. Clair County. On January 14, 2012, the circuit court confirmed the Commission's decision and this appeal followed.

¶ 18

II. ANALYSIS

¶ 19 On appeal, claimant argues the Commission should have awarded him a person-as-a-whole award under section 8(d)(2) of the Act (820 ILCS 305/8(d)(2) (West 2008)), in addition to the compensation awarded claimant for a scheduled loss to the right leg as set forth in section 8(e)(12) of the Act (820 ILCS 305/8(e)(12) (West 2008)). According to claimant, he suffered an injury to his leg, and a separate injury to his groin. Thus, he is entitled to additional compensation for his groin injury on the basis that he sustained serious and permanent injuries not covered by sections 8(c) and 8(e) of the Act (820 ILCS 305/8(c), (e) (West 2008)). 820 ILCS 305/8(d)(2) (West 2008).

¶ 20 Section 8(e) sets forth a statutory schedule of benefits for the physical loss of or the permanent and complete loss of use of certain parts of the body. 820 ILCS 305/8(e) (West 2008). The number of benefit weeks awarded varies by the body part affected. 820 ILCS 305/8(e) (West 2008). An employee who suffers the physical loss of a leg or the permanent and complete loss of use of a leg is compensated at 215 benefit weeks. 820 ILCS 305/8(e)(12) (West 2008). Benefits for an injury resulting in less than a total loss of function of a body part are calculated according to the percentage loss of function of that part. See *Outboard Marine Corp. v. Industrial Comm'n*, 309 Ill. App. 3d 1026, 1029, 723 N.E.2d 835, 837 (2000) ("When loss of use is found, benefits are generally calculated as a percentage of the benefits of total loss of the member").

¶ 21 Section 8(d)(2) provides for benefits in any of the following three situations: (1) where a claimant sustains serious and permanent injuries not covered by section 8(c) (820 ILCS 305/8(c) (West 2008) (relating to injuries resulting in disfigurement)) or section 8(e) of the Act; (2) where

a claimant covered by section 8(c) or 8(e) of the Act also sustains other injuries which are not covered by those two sections and such injuries do not incapacitate him from pursuing his employment but would disable him from pursuing other suitable occupations, or which have otherwise resulted in physical impairment; or (3) where a claimant suffers injuries which partially incapacitate him from pursuing the duties of his usual and customary line of employment but do not result in an impairment of earning capacity. 820 ILCS 305/8(d)(2) (West 2008). Under section 8(d)(2), benefits are awarded based on the "percentage of 500 weeks that the partial disability resulting from the injuries covered by this paragraph bears to total disability." 820 ILCS 305/8(d)(2) (West 2008). As the foregoing discussion suggests, the amount of compensation for permanent partial disability benefits can vary significantly depending on whether an injury falls under the statutory schedule or whether the injury is compensable as a percentage of the person as a whole. See *Will County Forest Preserve District v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110077WC, ¶ 14, 970 N.E.2d 16.

¶ 22 In this case, the Commission determined that claimant's injury should be compensated as a scheduled loss to the right leg as set forth in section 8(e)(12) of the Act (820 ILCS 305/8(e)(12) (West 2008)). As noted above, claimant insists that in addition to the compensation awarded him for a scheduled loss to the right leg (820 ILCS 305/8(e)(12) (West 2008)), the Commission should find a person-as-a-whole award appropriate under the first subpart of section 8(d)(2) due to his groin injury ("If, as a result of the accident, the employee sustains serious and permanent injuries not covered by paragraphs (c) and (e) *** he shall receive *** compensation"). The determination of the extent or permanency of an employee's disability is a question of fact for the Commission, and its decision will not be disturbed on appeal unless it is against the manifest

weight of the evidence. *Ingalls Memorial Hospital v. Industrial Comm'n*, 241 Ill. App. 3d 710, 718, 609 N.E.2d 775, 782 (1993). A decision is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent. *Elgin Board of Education School District U-46 v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 943, 949, 949 N.E.2d 198, 204 (2011).

¶ 23 It is unnecessary for us to decide whether claimant suffered an injury to his leg, and a separate injury to his groin. In order to be eligible for benefits under section 8(d)(2), claimant must prove he sustained *serious and permanent injuries*. See *Archer Daniels Midland Co. v. Industrial Comm'n*, 99 Ill. 2d 275, 280, 458 N.E.2d 494, 497 (1983). Claimant argues on appeal that he continues to experience "pain and swelling in his groin area, as well as pain in his right thigh." However, claimant testified at the arbitration hearing that he had no more pain, his right leg was "alright," and Dr. Hagan placed no restrictions on his activities. Claimant's complaints of (1) occasional, bothersome swelling in his upper thigh into the groin and (2) "a little problem" at the incision site only when claimant stands after sitting for an extended period, do not suggest "serious and permanent injuries." The arbitrator's decision, affirmed and adopted by the Commission, states:

"Dr. Hagan found petitioner had done extremely well following his nerve resection: his original groin pain was completely resolved; he had full range of motion about the hip; he demonstrated good strength in the lower abdomen and proximal thigh; and, he had minimal swelling in the area of the incision.

Although petitioner complained of continued numbness in the right groin area, and exhibited a raised area on his right upper thigh, his leg pain was gone, he was subject

to no restrictions, and he was performing the normal activities of daily life without difficulty."

It is clear that the Commission could have reasonably inferred from the proffered evidence in this case that claimant did not sustain serious and permanent injuries. Claimant relies on this court's decision in *Will County Forest Preserve*. *Will County Forest Preserve* is factually distinguishable from the present case. In *Will County Forest Preserve*, this court found applicable the first subpart of section 8(d)(2) where the claimant proved he sustained serious and permanent injuries to his shoulder not covered by sections 8(c) or 8(e) of the Act. See *Will County Forest Preserve*, 2012 IL App (3d) 110077WC, ¶ 21, 970 N.E.2d 16. This court found the evidence in *Will County Forest Preserve* clearly established the claimant (1) suffered an injury to his shoulder not covered by sections 8(c) or 8(e) of the Act and (2) continued to experience right shoulder stiffness, soreness, and weakness. *Will County Forest Preserve*, 2012 IL App (3d) 110077WC, ¶ 20, 970 N.E.2d 16.

¶ 24 In this case, the Commission found (1) claimant's groin and leg pain had resolved and (2) claimant performed normal daily activities without difficulty. Therefore, its decision to not award claimant benefits pursuant to section 8(d)(2) of the Act (820 ILCS 305/8(d)(2) (West 2008)), in addition to benefits pursuant to section 8(e)(12) of the Act (820 ILCS 305/8(e)(12) (West 2008)), was not against the manifest weight of the evidence.

¶ 25 III. CONCLUSION

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

¶ 27 Affirmed.