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2014 IL App (1st) 130779WC-U

Workers' Compensation  
Commission Division  
Order filed: April 14, 2014

NO. 1-13-0779WC

IN THE APPELLATE COURT

OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

LAKE BOOK MANUFACTURING, INC.,	)	Appeal from
Appellee,	)	Circuit Court of
v.	)	Cook County
THE ILLINOIS WORKERS' COMPENSATION	)	No. 12L50891
COMMISSION et al. (Maricela Tamayo,	)	
Appellant).	)	Honorable
	)	Robert Lopez-Cepero,
	)	Judge Presiding.

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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 circuit court erred in striking the Commission's credibility determinations "for lack of a supporting specific finding or explanation of the basis for same," and on that basis reversing the Commission's decision and reinstating the arbitrator's decision.

¶ 1 On October 5, 2010, claimant, Maricela Tamayo, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 through 30 (West 2008)), seeking benefits from the employer, Lake Book Manufacturing, Inc., for injuries suffered to her low back on May 28, 2010. Following a hearing, the arbitrator found

claimant failed to prove she sustained an accident that arose out of and in the course of her employment with the employer on May 28, 2010, and denied claimant benefits. Claimant sought review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). On June 8, 2012, the Commission issued an 11-page order reversing the arbitrator's decision. The Commission found claimant proved she sustained an accident that arose out of and in the course of her employment with the employer on May 28, 2010, and awarded claimant temporary total disability (TTD) benefits in the amount of \$359.59 per week for 42-1/7 weeks; and medical expenses in the amount of \$4,851.56.

¶ 2 Thereafter, the employer filed a petition seeking judicial review in the circuit court of Cook County. On February 27, 2013, the court entered an order striking the Commission's "credibility determinations \*\*\* for lack of a supporting specific finding or explanation of the basis for same." On this basis, the circuit court reversed the Commission's decision and reinstated the arbitrator's decision.

¶ 3 Claimant appeals, arguing the circuit court erred in striking the Commission's credibility determinations "for lack of a supporting specific finding or explanation of the basis for same," and on that basis, reversing the Commission's decision and reinstating the arbitrator's decision. For the reasons which follow, we reverse the judgment of the circuit court and reinstate the Commission's decision.

¶ 4 I. BACKGROUND

¶ 5 The following factual recitation is taken from the evidence presented at the arbitration hearing on April 25, 2011, and August 1, 2011.

¶ 6 The 49-year-old claimant testified she had worked for the employer, a book

manufacturer, for 28 years. On May 28, 2010, claimant began work at 7 a.m. At approximately 9 or 10 a.m., claimant worked on the folding machine. She removed a stack of paper from the folding machine, "jogged" or straightened the stack of paper, and placed the paper on a skid carton next to her work area. The skid sat approximately three inches from the ground.

Claimant agreed each stack of paper weighed approximately 2.6 pounds. When claimant turned to place the paper on the skid carton, she felt immediate low back pain. She characterized the pain as 10 out of 10.

¶ 7 Claimant testified she continued to work until 3:00 p.m., the end of her work day. She did not report the accident to her employer because she thought the pain would subside. Claimant testified she took ibuprofen and Tylenol over the three-day holiday weekend, and treated with ice and heat. The ibuprofen provided some temporary relief.

¶ 8 Claimant continued to experience low back pain and reported her work accident to the employer when she returned to work on June 1, 2010. The employer directed claimant to Advanced Occupational Medicine Specialists where she was treated by Dr. Rajeev Khanna. A lumbar spine x-ray revealed an anterograde spondylolisthesis at L5-S1 and loss of the lordotic curvature. Dr. Khanna diagnosed claimant with lumbar strain and lumbago. He prescribed an anti-inflammatory and muscle relaxant, and returned claimant to "sitting work only." Claimant continued to experience low back pain. Dr. Khanna recommended claimant undergo a standard lumbar magnetic resonance imaging (MRI) on June 15, 2010, which revealed a right lateral protrusion of the L4-5 disc complicated by hypertrophic facet arthropathy; moderate right foraminal narrowing with mild central canal and mild to moderate left foraminal narrowing; mild to moderate bilateral foraminal narrowing and mild central canal narrowing at L5-S1; and mild

central canal and bilateral foraminal narrowing at L2-3 and L3-4. Based on these findings, Dr. Khanna diagnosed claimant with a L4-L5 disc protrusion and lumbar neuritis in addition to the previously diagnosed lumbar strain and lumbago. He prescribed additional medications for pain and inflammation, and recommended claimant continue to work light duty. Claimant last treated with Dr. Khanna on September 7, 2010. According to the medical note on that date, claimant was not in pain but continued to experience right leg numbing and tingling. Dr. Khanna returned claimant to full-duty work.

¶ 9 Upon referral by Dr. Khanna, claimant saw Dr. Sue Harsoor, a pain management specialist, on July 23, 2010. Claimant reported sudden low back pain when she bent down to place papers in a box while working. Claimant underwent lumbar epidural steroid injections on August 3, August 13, and August 31, 2010. Following each injection, claimant's low back pain improved but she continued to experience right leg pain and tingling. Claimant last saw Dr. Harsoor on September 10, 2010. At that time, Dr. Harsoor noted claimant continued to experience mild right leg tingling, difficulty balancing, and pain upon palpation of the lumbar intervertebral spaces (discs). Dr. Harsoor's examination revealed a positive straight leg raise on the right and normal straight leg raise on the left. Dr. Harsoor found claimant had reached maximum medical improvement and returned claimant to full-duty work.

¶ 10 Upon her return to full-duty work, claimant experienced low back pain and cramps in her feet. Claimant sought treatment with neurologist Dr. Ning Sun on October 11, 2010. Claimant complained of low back pain, leg weakness, and bilateral tingling and numbness in her hands. Claimant reported the pain began on May 28, 2010, while working. According to the medical note, claimant "was putting things down and [felt] strong low back pain radiating to

right leg when she [got] up." Claimant reported she could barely move or walk at that time.

According to Dr. Sun, the June 15, 2010, MRI showed multiple disc diseases, including multiple mild disc bulging. Claimant had undergone three epidural injections and improved but continued to experience right leg numbness. Following her return to full-duty work, claimant had more low back pain and complained of weakness in both legs at the end of the day. She reported the pain was constant and she was taking Tylenol with no significant improvement. Claimant had not experienced significant low back pain in the past.

¶ 11 Upon examination, Dr. Sun noted claimant had a positive right-sided straight leg test. Dr. Sun's assessment of claimant included low back pain, possible lumbarsacral radiculopathy, and a hand condition not related to the instant claim. Dr. Sun recommended claimant undergo an EMG/NCS study and repeat lumbar spine MRI. He removed claimant from work until further evaluation.

¶ 12 In medical notes dated October 19, 2010, Dr. Sun reported the EMG/NCS study showed no definite evidence of radiculopathy. An October 13, 2010, MRI showed a global disc bulge with mild bilateral neural foraminal narrowing at L2-3; disc space narrowing and disc desiccation with a global disc bulge and mild right and moderate left sided neural foraminal narrowing at L3-4; a global disc bulge with superimposed rightward disc protrusion with disc space narrowing and disc desiccation at L4-5; grade one anterolisthesis, and a global disc bulge with disc space narrowing and disc desiccation with mild/moderate bilateral neural foraminal narrowing at L5-S1; moderate degenerative facet hypertrophy throughout the lumbar spine. Dr. Sun noted no significant change from the June 15, 2010, MRI.

¶ 13 Claimant continued to experience low back pain. On October 27, 2010, Dr. Sun

prescribed the use of a TENS unit which provided claimant some relief. Claimant underwent a lumbar spine MRI on January 12, 2011, also showing no significant change from the previous MRI. Dr. Sun noted the multiple level disc bulging. In his deposition testimony on June 29, 2011, Dr. Sun stated within a reasonable degree of medical certainty, the May 28, 2010, accident was causally related to claimant's chronic low back condition and she remained unable to work.

¶ 14 On October 1, 2010, Dr. Babak Lami, an orthopaedic surgeon, examined claimant at the request of the employer. Dr. Lami summarized claimant's treatment and stated his impressions in two reports dated October 1, 2010, and January 30, 2011. According to Dr. Lami, claimant suffered at most a possible back sprain as a result of her employment activities, which should have resolved within days of May 28, 2010. Claimant may have required some physical therapy. Dr. Lami opined claimant's MRI findings were minimal and not related to an injury on May 28, 2010.

¶ 15 Claimant acknowledged having complaints of back pain beginning in 1983. She sought treatment with chiropractor Dr. Regina Cienkus on April 22, 1993, for her low back. At Dr. Cienkus' request, the employer provided claimant a back support on April 23, 1993. In 2003, claimant sought treatment for back pain with Dr. D. Donald Dettore. Claimant underwent a lumbar spine MRI on January 22, 2003, which showed mild degenerative disc disease and spondylitic changes of the lower lumbar spine; and no evidence for significant disc protrusion or spinal stenosis at any lumbar level. In February 2008 and March 2008, claimant again sought treatment with Dr. Dettore for back pain. The employer's records show claimant missed work on October 19, 2009, and January 11, 2010, due to low back problems. Claimant testified she had not taken medication for low back pain in the year preceding the accident. She acknowledged

taking Celebrex for rheumatoid arthritis but not in the past year.

¶ 16 Timothy Bruzan testified he worked for the employer as a machine operator on May 28, 2010. Bruzan worked with claimant for approximately three hours in the morning and the last hour of the day. Claimant did not complain to Bruzan of an injury and did not appear to be in any discomfort. Bruzan admitted he ran four machines while working on May 28, 2010, and his attention was directed to the machinery and not claimant.

¶ 17 John Sorrentino testified he had worked for the employer as director of safety and training for four years. Claimant reported a work accident on June 1, 2010. Sorrentino completed an accident report stating claimant reported the accident to Christina Espinal and Espinal confirmed to Sorrentino that claimant complained of back pain on May 28, 2010, sometime after lunch.

¶ 18 Sorrentino secured a video recording of an individual he believed to be claimant, leaving the building on May 28, 2010, at approximately 3:00 p.m. The individual's gait in the video appears normal. The arbitrator viewed the video stating, "It looks like her, but it is not a great picture." The arbitrator agreed the video frames were "jerky." Claimant stated it was possible that the image was of her but she was not sure. Sorrentino believed the video image was claimant "based on her appearance, and \*\*\* particular style of body movement."

¶ 19 Following the hearing, the arbitrator found claimant failed to prove she sustained injuries arising out of and in the course of her employment with the employer on May 28, 2010. The arbitrator was persuaded by Dr. Lami who opined claimant's physical exam on October 1, 2010, was normal; the accident did not exacerbate claimant's pre-existing condition; there was

no evidence that claimant's spine was the source of her pain; and claimant did not need further treatment.

¶ 20 Claimant sought review of the arbitrator's decision before the Commission. In a unanimous decision, the Commission reversed the arbitrator's decision finding claimant proved she sustained an accident that arose out of and in the course of her employment with the employer on May 28, 2010, and awarded claimant TTD benefits in the amount of \$359.59 per week for 42 1/7 weeks; and medical expenses in the amount of \$4,851.56. In support of its decision, the Commission found the employer's accident report consistent with claimant's account of injury. Although the Commission acknowledged claimant experienced back pain before May 28, 2010, the Commission found claimant's treatment before her work accident "sporadic in nature and encompassed different parts of her back." The Commission relied on the opinion of Dr. Sun to find claimant proved she sustained an accident arising out of and in the course of her employment with the employer, finding Dr. Sun's opinion more persuasive than Dr. Lami's opinion.

¶ 21 Thereafter, the employer filed a petition seeking judicial review in the circuit court of Cook County. On February 27, 2013, the court entered an order striking the Commission's "credibility determinations \*\*\* for lack of a supporting specific finding or explanation of the basis for same." The court noted the Commission "made credibility determinations and other findings in favor of [claimant]." The court held as a matter of law, the Commission must include in its decisions and opinions on review "specific findings or explanation of the basis for a credibility determination." Because the court found the Commission's decision did not contain "specific findings or other explanation for the basis of the



credibility determinations," it reversed the Commission's decision and reinstated the arbitrator's decision. Further, the court denied claimant's request for an order remanding the matter to the Commission "for the limited purpose of the Commission providing a specific finding or other explanation for the basis of [its] credibility determination," reasoning it would allow claimant " 'a second bite at the apple.' " This appeal followed.

¶ 22

## II. ANALYSIS

¶ 23

In *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866, 923 N.E.2d 870, 877 (2010), this court "faced the obligation of determining whether the Commission's credibility findings which are contrary to those of the arbitrator are against the manifest weight of the evidence." This court observed that "[a] resolution of the question can only rest upon the reasons given by the Commission for the variance." We further provided the following:

"When the Commission gives no reasons for a contrary credibility determination, its decision may be lacking in findings which make meaningful judicial review possible; and, in such cases, the appropriate remedy is to remand the matter back to the Commission with directions to make the necessary findings.

[Citations.] However, when, as in this case, the Commission gives its reasons for making credibility findings contrary to those made by the arbitrator, our inquiry on review is whether the findings are against the manifest weight of the evidence. [Citation.]" *R & D Thiel*, 398 Ill. App. 3d at 866, 923 N.E.2d at 870.

Pursuant to *R & D Thiel*, we first determine whether the Commission in the instant case gave reasons for making credibility findings contrary to those made by the arbitrator.

¶ 24 In this case, the arbitrator found claimant's failure to disclose a history of significant low back problems prior to May 28, 2010, to any of her physicians or to the arbitrator in her direct examination, made claimant's credibility on all issues, especially accident, suspect. Further, the arbitrator found claimant's history of accident inconsistent where the accident report stated claimant reported the alleged accident to Bruzan, but claimant testified at the arbitration hearing she did not report the alleged accident to Bruzan. The arbitrator also found claimant's failure to seek any medical care over the weekend with 10/10 pain was not credible. According to the arbitrator, claimant failed to meet her burden to prove causal connection because her condition prior to May 28, 2010, "was constant sciatica that kept her awake at night." Further, claimant's straight leg raising was inconsistent where it was negative for Dr. Khanna, Dr. Lami, and Dr. Harssor but positive for Dr. Sun. The arbitrator gave no weight to Dr. Sun's causation opinion as it was based on "an incomplete and largely false history." Instead, the arbitrator adopted the opinion of Dr. Lami that there was no causal connection because he "reviewed all the medical records that Dr. Sun had not seen."

¶ 25 In contrast, the Commission found claimant proved she sustained an accident arising out of and in the course of employment with the employer. The Commission noted claimant's testimony regarding details of the accident and the onset of her low back pain. The Commission further noted the accident report prepared by the employer was consistent with claimant's "description of the mechanism of injury." According to the accident report, Espinal confirmed claimant complained of back pain on May 28, 2010, sometime after lunch. With

regard to the videotape offered by the employer, the Commission noted it reviewed the videotape and concluded "it is unclear whether the female in the videotape is Petitioner or another employee."

¶ 26 In support of its finding that claimant's low back condition is causally related to her work accident, the Commission relied on the opinion of Dr. Sun "that the bending activity Petitioner engaged in on May 28, 2010, either caused or aggravated Petitioner's low back condition." According to the Commission, Dr. Sun "explained that the action of bending over can trigger disk herniation depending on how fast one bends." The Commission quoted the following from Dr. Sun's deposition testimony:

"From – from the time of the onset of the problem, it appears to be related to the onset of that incident. When she was lifting things bent over, she feels the pain in the back. And I have a reasonable belief that this is the cause of the low-back pain. The other thing is, when I talked to her about – you know, whether she has the low-back pain before and she does have some low-back pain before, but the fact is that she has never stopped working before ... And given the fact that the MRI finding is that the MRI findings seem to be consistent with her symptoms, the L4-5 disk seems to be related to her symptoms on the right leg. And the question as to whether that finding exists before the incident or was aggravated during the incident, I cannot make a clear determination because – only because we never – in theory, we never had an MRI before,

before that time, so we have nothing to compare.

¶ 27 As is evidenced by the foregoing, it is clear the Commission gave reasons for making credibility findings contrary to those made by the arbitrator. Thus, our inquiry on review is whether the findings are against the manifest weight of the evidence. See *R & D Thiel*, 398 Ill. App. 3d at 866, 923 N.E.2d at 877.

¶ 28 In order to prevail in a claim for benefits under the Act, a claimant must prove by a preponderance of the evidence that she suffered a disabling injury that arose out of and in the course of her employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). In workers' compensation cases, the Commission is the ultimate decisionmaker. *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 173, 866 N.E.2d 191, 199 (2007). "The Commission must weigh the evidence presented at the arbitration hearing and determine where the preponderance of that evidence lies." *Roberson*, 225 Ill. 2d at 173, 866 N.E.2d at 199. A reviewing court will not set aside the Commission's decision unless its analysis is contrary to law or its fact determinations are against the manifest weight of the evidence. *Roberson*, 225 Ill. 2d at 173, 866 N.E.2d at 199. 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. *Ameritech Services, Inc. v. Illinois Workers' Compensation Comm'n*, 389 Ill. App. 3d 191, 203, 904 N.E.2d 1122, 1133 (2009). The appropriate test is simply whether the record contains sufficient evidence to support the Commission's determination. *R & D Thiel*, 398 Ill. App. 3d at 866, 923 N.E.2d at 877.

¶ 29 Here, the evidence was minimally sufficient to support the Commission's finding that claimant's current condition of ill-being was caused by a workplace accident on May 28,

2010. The Commission apparently found credible claimant's testimony of the events. It further found the employer's accident report was consistent with claimant's account of injury. Although the Commission acknowledged claimant experienced back pain before May 28, 2010, the Commission found claimant's treatment before her work accident "sporadic in nature and encompassed different parts of her back." Claimant's MRIs demonstrated the existence of multiple disc diseases, including multiple mild disc bulging. In support of its causation finding, the Commission adopted the testimony of Dr. Sun that the workplace accident caused claimant's low back pain. The fact that Dr. Lami offered an opposing opinion regarding causation does not require this court to disturb the Commission's decision. It is the function of the Commission to 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, 223 (1980). Here, the Commission, exercising its function, found Dr. Sun's opinion more persuasive than Dr. Lami's opinion. Accordingly, we do not find the Commission's determination, finding claimant proved she sustained an accident that arose out of and in the course of her employment with the employer on May 28, 2010, is against the manifest weight of the evidence.

¶ 30

### III. CONCLUSION

¶ 31 Based upon the foregoing analysis, we reverse the judgment of the circuit court, and we reinstate the Commission's decision.

¶ 32 Reversed and Commission decision reinstated.