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2014 IL App (2d) 121279WC-U

Order filed January 22, 2014

IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MICHAEL GLASS,	)	Appeal from the Circuit Court
	)	of the 17 <sup>th</sup> Judicial Circuit,
Appellant,	)	Winnebago County, Illinois
	)	
v.	)	Appeal No. 2-12-1279WC
	)	Circuit No. 12-MR-296
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION <i>et al.</i> (YRC, Inc., Appellee).	)	Honorable
	)	J. Edward Prochaska,
	)	Judge, Presiding.

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

**ORDER**

¶ 1 *Held:* The Commission's finding that the claimant reached maximum medical improvement on February 10, 2010, and that his current state of ill-being was not causally related to an accident on March 17, 2009, was not against the manifest weight of the evidence. The weight accorded to the medical evidence by the Commission was not erroneous.

¶ 2 The claimant, Michael Glass, 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 injuries to his back allegedly occurring on March 17, 2009. On that date, while employed by YRC, Inc. (employer) as a truck driver/dock worker, the forklift the claimant was operating abruptly struck a concrete dock when a dock plate shifted. The claimant reported neck and back pain immediately after impact and additional low back pain and left leg pain in the following days.

¶ 3 Following a section 19(b) hearing on June 17, 2011, an arbitrator found that the claimant suffered accidental injuries arising out of and in the course of his employment on March 17, 2009. The arbitrator awarded temporary total disability (TTD) benefits for the period from March 31, 2009, through June 17, 2011. The arbitrator also awarded reasonable and necessary medical expenses of \$17,840.20 and ordered the employer to authorize and pay for prospective medical care.

¶ 4 The employer appealed to the Illinois Workers' Compensation Commission (the Commission) which modified the arbitrator's decision by finding that the claimant reached maximum medical improvement (MMI) on February 10, 2010, thus terminating the claimant's TTD benefits on February 10, 2010. The Commission also determined that the claimant was not entitled to prospective medical expenses. The claimant sought judicial review of the Commission's decision in the circuit court of Winnebago County, which confirmed the Commission's decision. This appeal followed.

¶ 5 The claimant raises the following issue on appeal: (1) whether the Commission's finding that the claimant had reached MMI on February 10, 2010, and thereby reducing his TTD benefits

was against the manifest weight of the evidence; (2) whether the Commission improperly considered certain medical evidence as being more persuasive and failed to correctly review and weigh the evidence; and (3) whether the Commission erred in finding that the claimant's current condition of ill-being is not causally related to the March 17, 2009, accident.

¶ 6

#### FACTS

¶ 7 The claimant testified that on March 17, 2009, he was employed as a truck driver and dock worker. On that date, he was driving a forklift unloading skids from a trailer. As he was exiting the trailer with a skid, the weld on the dock plate collapsed under the forklift causing the front of the forklift to fall between the trailer and the dock. Two of the claimant's coworkers were able to lift his forklift off of the dock plate and he was able to get off the forklift. The claimant testified that he was immediately shaken up by the incident and noted neck and back pain. He immediately informed his supervisor and his operations manager of the incident. The claimant testified that he finished his shift, but noticed that the pain in his neck and low back continued with the pain later moving into his left side and down his left leg. The employer did not dispute the claimant's description of the accident.

¶ 8 The claimant testified that he made an appointment to see his primary care physician, Dr. Michael Donovan at the Monroe Clinic in Durand, Illinois. The claimant was unable to be seen by Dr. Donovan until March 31, 2009. During that visit, Dr. Donovan ordered the claimant off work and referred him to a neurosurgeon with the Rockford Spine Center.

¶ 9 On May 18, 2009, the claimant was examined at the request of the employer by Dr. Carl Graf, a board certified orthopedic surgeon. Dr. Graf noted that the claimant had symptoms from a previous injury which were under control at the time of the March 17, 2009, accident. Dr. Graf

noted that a significant portion of the claimant's pain after the March 17, 2009, accident was consistent with his previous ongoing symptoms though he appeared to have had an increased exacerbation secondary to his injury. He opined that the claimant sustained a temporary exacerbation of his chronic ongoing pain and he could return to light duty work. Dr. Graf opined that the claimant had not yet reached MMI. He recommended an MRI and physical therapy.

¶ 10 On June 5, 2009, the claimant was examined by Dr. Marie Walker of the Rockford Spine Center. According to Dr. Walker's June 5, 2009 report, the claimant complained of mid-back pain, bilateral leg numbness and right leg weakness. It was noted that the claimant was involved in a motor vehicle accident one week prior to the March 17, 2009, accident and was minimally injured. The car accident caused a flare-up of the claimant's myofascial pain though his previous symptoms remained unchanged according to Dr. Walker. Her examination revealed tenderness to palpation on the left thoracic paraspinal region. Dr. Walker recommended an EMG and an MRI to rule out a possible compression fracture, disk herniation or nerve involvement.

¶ 11 The MRI was performed on July 2, 2009. That same day, the claimant was again examined by Dr. Walker, who noted that the claimant's subjective complaints remained unchanged. The MRI revealed chronic degenerative changes and a calcified disk at T11-T12, which had been previously noted in an MRI administered in 2005. Dr. Walker diagnosed the claimant's condition as chronic mechanical low back and leg pain that was possibly related to his chronic nerve damage from a previous lumbar injury. Dr. Walker noted that she did not have anything further to offer the claimant except physical therapy. She opined that his symptoms were due to persistent neuropathic pain from a lumbar decompression in 2005. She noted there was nothing that would warrant permanent disability or restrictions.

¶ 12 The claimant was then referred to Dr. Jeffery Masciopinto, a board certified neurosurgeon associated with the Dean Health Systems in Madison, Wisconsin. The claimant treated with Dr. Masciopinto from August 26, 2009 through February 23, 2011. Dr. Masciopinto ordered nerve root injections which were performed on September 9, 2009 and December 15, 2009.

¶ 13 On February 3, 2010, the claimant underwent a second examination by Dr. Graf. Dr. Graf noted that the claimant's complaints were related to his previous injury and he only sustained a temporary exacerbation of his underlying lumbar condition as a result of the March 17, 2009, accident. Dr. Graf further noted that the initial care and treatment following the accident appeared reasonable and appropriate. He noted that the claimant was back at his baseline and had reached MMI. He opined that the claimant's cervical complaints were not related to his injury and no further treatment or care was warranted. He further noted that the claimant may need future care for his lumbar spine, but it was related to his prior injury, not the March 17, 2009, accident. He further opined that the claimant could return to work without any additional restrictions.

¶ 14 On December 12, 2010, Dr. Masciopinto again examined the claimant and reported that the claimant had exacerbated his baseline low back pain and had new symptoms of left leg pain. He opined the accident of March 17, 2009, aggravated an underlying degenerative condition at L2-L3 and L3-L4 and created new radicular pain. He further opined that if the claimant's condition continued he would then be a candidate for surgical intervention. The claimant was last examined by Dr. Masciopinto on February 23, 2011, at which time Dr. Masciopinto advised the claimant that he needed back surgery.

¶ 15 Dr. Masciopinto's evidence deposition was taken September 10, 2010. His testimony included the fact that he was board certified in neurosurgery and that he first met with the claimant on August 26, 2009. At the initial examination, the claimant described moderate aching in the lower back, left greater than right, mostly in the lumbar region and left leg pain consistent with L4-L5 distribution. Dr. Masciopinto testified that he reviewed the lumbar and thoracic MRI of June 24, 2009, which revealed L2-L3, L3-L4 facet arthritis, mild retrograde degenerative spondylolisthesis, disk degeneration and bulging. His review of the thoracic MRI revealed prominent right proximal foraminal dorsal disk-osteophyte resulting in moderate right foraminal stenosis at T10-T11 and left paracentral to proximal foraminal disk protrusion that impressed on the ventral margin sac causing left lateral recess stenosis at T11-T12, all of which were consistent with the 2005 MRI. Dr. Masciopinto further noted that the claimant presented with a complex history of multiple spine operations and he thought that the current symptoms from the L2-L3 and L3-L4 levels were symptoms resulting from the prior surgeries.

¶ 16 Dr. Masciopinto opined, based upon his examination and review of the medical records, that the claimant's symptoms were related to the March 17, 2009, accident. On cross-examination, Dr. Masciopinto testified that he was aware of Dr. Graf's opinion that the claimant's current condition was merely a temporary exacerbation of his significant prior lumbar injuries, however, he disagreed with Dr. Graf's opinion.

¶ 17 Dr. Graf's evidence deposition was taken October 8, 2010. Dr. Graf testified that he is a spine surgeon and board certified in orthopedic surgery. He noted that the claimant had returned to work following his fusion surgery in 2007 and worked until March 2009. The claimant told Dr. Graf that he had low back pain and muscle spasms as well as pain directly above the level of

the fusion. Dr. Graf's examination of the claimant on May 18, 2009, noted pain through palpation in the low back at L2-L3. The claimant required assistance with squatting down and coming back up. Dr. Graf observed that the claimant had a chronic pain condition in his lower back. Dr. Graf's second examination of the claimant, performed on February 3, 2010, showed that the claimant's pain had improved but his condition was essentially the same. Dr. Graf further testified that he reviewed the July 2, 2009, medical records from Dr. Walker who opined that the claimant's condition was due to persistent neuropathic pain from his lumbar decompression which he had in 2006 and there was nothing that would warrant permanent disability or restriction. On cross-examination, Dr. Graf noted that the claimant had reported increased numbness in the back and front of his legs following his March 17, 2009, accident. Dr. Graf opined, however, that the March 17, 2009, accident caused only a temporary exacerbation of pain from his previous injuries, that the claimant had returned to his baseline level of pain, and that he had reached MMI.

¶ 18 The claimant testified that prior to the March 17, 2009, accident he had had a prior work accident to his back that required three surgeries. The last surgery was a spinal fusion at L4-S1 performed on February 12, 2007, by Dr. Michael Roh, an orthopedic surgeon with the Rockford Spine Center. The claimant testified that after the February 12, 2007, surgery he had physical therapy, underwent a work hardening program, and was released to return to work as a truck driver/dock worker with no restrictions. In August 2007, the claimant passed a DOT physical, however, the test listed spinal injury and low back pain as conditions from which the claimant currently suffered.

¶ 19 The claimant returned to his regular employment in September 2007, without restrictions, although he continued to undergo physical therapy and pain management after returning to work. The claimant also testified that after he returned to work in September of 2007, he had occasional back pain for which he received pain medication. He testified that these episodes of pain occurred approximately twice a week as well as when the weather turned cold. He would often take the pain medication after work. The claimant acknowledged that he was under the continuing care of Dr. Roh until February 7, 2008, at which time he still reported leg and back pain. The claimant also testified that he was still taking medication to control the pain for the 2007 surgery in March 2009.

¶ 20 The claimant also testified that in March 2008 he filled out paperwork to request medical leave. Accompanying that request was a written report by Dr. Roh stating that the medical leave was necessary due to the claimant's "intermittent back pain" as well as Dr. Roh's opinion that the claimant's back pain may be so intense that he would need to be off work and take pain medication. Dr. Roh also opined that the claimant's condition was permanent.

¶ 21 The arbitrator found that Dr. Mascipinto's opinion that the claimant's back pain was related to the March 17, 2009, accident and that the claimant had yet to reach MMI was more persuasive than Dr. Graf's opinion to the contrary. The arbitrator's decision contained no analysis as to why he found one medical opinion more credible than the other. After discussing both opinions, the arbitrator simply stated: "The Arbitrator finds the opinion of Dr. Mascipinto persuasive." The arbitrator found, therefore, that the claimant's condition of ill-being of his low back was causally related to her work injury of March 17, 2009, accident, and that the claimant had yet to reach MMI as the date of the hearing.



¶ 22 The employer appealed the arbitrator's decision to the Commission. The Commission rejected the arbitrator's conclusions. The Commission found that the claimant had suffered only a temporary exacerbation of his previous condition as a result of the March 17, 2009, accident, and thus, his current condition of ill-being was not causally related to the March 17, 2009, accident. The Commission also found, based upon Dr. Graf's opinion that the claimant had reached MMI on February 10, 2010.

¶ 23 In reaching its conclusion, the Commission noted the claimant's testimony that he continued to have leg and back pain after the 2007 surgery and that he continued to take pain medication even at the time of the March 17, 2009, accident. The Commission also noted that the MRI taken after the March 17, 2009, accident showed only the same degenerative condition as had been present in a 2005 MRI. The Commission further made note of Dr. Walker's diagnoses in June 2009 that the claimant's current condition of ill-being was probably related to his prior injury and not the March 17, 2009, accident. The Commission further noted Dr. Graf's opinion that the claimant's condition after the March 17, 2009, accident was a temporary exacerbation of his prior injuries and that by February 10, 2010, the claimant's condition had returned to the baseline established after the 2007 surgery. Finally, the Commission noted that Dr. Masciopinto testified that he was handicapped in rendering his opinion by the fact that he did not have all the relevant information regarding the claimant's prior surgeries and he did not have access to the claimant's prior MRIs. The Commission also noted that Dr. Masciopinto was under the mistaken impression that the claimant's leg and back pain following the March 17, 2009, accident were new symptoms in spite of the fact that the claimant had reported leg and back pain consistently since the 2007 surgery. Based upon the totality of these circumstances, the

Commission modified the arbitrator's award and determined that the claimant was not entitled to TTD benefits or medical expenses after February 10, 2010.

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

¶ 25 ANALYSIS

¶ 26 The claimant maintains that the Commission erred in finding that his current condition of ill-being relating to his lower back was not causally related to the March 17, 2009, accident and its decision that he reached MMI on February 10, 2010, were against the manifest weight of the evidence. A claimant has the burden of proving by a preponderance of the credible evidence all the elements of his claim, including whether any alleged condition of ill-being was causally related to an industrial accident (*Parro v. Industrial Comm'n*, 260 Ill. App. 3d 551, 553 (1993)) and the duration of any temporary disability (*Nabisco Brands, Inc. v. Industrial Comm'n*, 266 Ill. App. 3d 1103, 1109 (1994)). Causal connection and duration of disability are questions of fact for the Commission to determine and its finding will not be overturned on appeal unless they are against the manifest weight of the evidence. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44 (1987). In resolving issues of fact related to causation, it is the Commission's exclusive province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine the relative weight to accord evidence, and to resolve conflicts in expert opinion testimony. *Hostney v. Illinois Workers' Compensation Comm'n*, 39 Ill. App. 3d 665, 675 (2009). A court of review will not substitute its judgment for that of the Commission merely because other inferences may have been drawn or different weight accorded to the evidence. *Swartz v.*

*Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086 (2005). Ultimately, the Commission's factual determinations must be upheld unless the opposite conclusion is clearly apparent. *Id.*

¶ 27 Here, the Commission weighed the evidence, including the medical opinion testimony of Drs. Walker and Graf, and determined that the claimant's current condition of ill being as it related to his lower back was not causally related to the March 17, 2009, accident and that his temporary condition had resolved by February 10, 2010. The claimant maintains that it was against the manifest weight of the evidence for the Commission to rely heavily upon Dr. Graf's opinion in reaching its conclusions. Our review of the Commission's decision leads to the conclusion that the Commission did not rely primarily upon Dr. Graf's opinion. The record as a whole clearly supports the Commission's finding that the claimant's condition of ill-being regarding his lower back began prior to the March 17, 2009, accident. As the Commission pointed out, there was a great deal of objective evidence supporting the finding that the claimant's low back pain was causally related to the claimant's injuries suffered in 2005 and 2007. The Commission noted, among other facts, that the claimant did not seek treatment for his injuries allegedly suffered in the March 19, 2009, accident, until approximately two weeks after the accident. In addition, Dr. Walker's opinion supports Dr. Graf's opinion. Given the record, it is not against the manifest weight of the evidence for the Commission to rely upon Dr. Graf's opinions in view of the other evidence supporting his conclusions.

¶ 28 The claimant next maintains that the Commission gave improper evidentiary weight to the reports and opinions of Drs. Graf and Walker. We find no merit in the claimant's position. The claimant's arguments address the weight to be accorded this evidence and it is well settled that it is within the Commission's unique province to resolve conflicts and assign weight to

evidence and that decision will not be overturned on appeal unless it is against the manifest weight of the evidence. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205-06 (1993). Here the weight accorded the opinions of Drs. Graf and Walker, as well as the diminished weight accorded to the opinion of Dr. Masciopinto cannot be said to be against the manifest weight of the evidence.

¶ 29 The claimant also maintains that the Commission erred in not awarding him medical expenses incurred after February 10, 2010. Since this argument is based solely on the premise that the Commission's causation finding is erroneous, a premise we have rejected, we also reject this contention without further discussion. *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 436 (2011).

¶ 30 CONCLUSION

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

¶ 32 Affirmed.