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2016 IL App (1st) 150251WC-U

FILED: July 22, 2016

NO. 1-15-0251WC

IN THE APPELLATE COURT

OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

DENISE HUGHES,	)	Appeal from
	)	Circuit Court of
Appellant,	)	Cook County
	)	No. 13L51107
v.	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION <i>et al.</i> (Chicago Transit Authority,	)	
Appellees).	)	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  
concur in the judgment.

### ORDER

¶ 1 *Held:* The circuit court's original order remanding the matter to the Commission for the determination of issues not previously before it was vacated and the cause remanded to the circuit court to consider anew the Commission's original decision.

¶ 2 Claimant, Denise Hughes, filed an application for adjustment of claim seeking benefits from her employer, Chicago Transit Authority, for injury to her right ankle pursuant to the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2010)). Following a December 14, 2010, hearing, the arbitrator found the current condition in claimant's right ankle

to be causally connected to a February 13, 2010, work accident, and awarded her benefits under the Act. On review, the Illinois Workers' Compensation Commission (Commission) affirmed and adopted the arbitrator's decision and remanded the matter to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980). On judicial review, the circuit court remanded the matter to the Commission for further determination of whether (1) a compensable accident occurred on July 23, 2010; (2) claimant was entitled to temporary total disability (TTD) benefits from July 23, 2010, through December 14, 2010; and (3) claimant was entitled to an award of medical expenses for services rendered after July 23, 2010. In addition, the circuit court found the causation opinion of claimant's treating physician—upon which the Commission relied—was "made without full knowledge of all the facts" and was "not supported by any reasoning or analysis." Thus, the circuit court concluded "the Commission's decision [regarding causal connection was] without support in the record."

¶ 3 On remand from the circuit court, the Commission concluded claimant (1) did not sustain a compensable accident on July 23, 2010; (2) was not entitled to TTD benefits from July 23, 2010, through December 14, 2010; and (3) was not entitled to medical benefits for services rendered on or after July 22, 2010. In determining claimant was not entitled to benefits for services rendered following her July 22, 2010, return to work, the Commission opined that the causation opinion of the employer's physician was more credible than that of claimant's treating physician. On judicial review, the circuit court confirmed the Commission's decision.

¶ 4 On appeal, claimant argues the circuit court abused its discretion by substituting its own judgment concerning the credibility of claimant's treating physician for that of the Commission. We reverse in part, vacate in part, and remand for further proceedings.

¶ 5

## I. BACKGROUND

¶ 6 At the outset, we note that the record on appeal in this case does not contain a transcript of the arbitration hearing, medical records, or reports from either physician who apparently testified regarding causal connection. The only document in the record from either physician is an October 8, 2010, letter from claimant's treating physician, Dr. Ellis Nam. The bulk of the record is comprised of the arbitrator's decision, the Commission's initial decision and its decision on remand, and the circuit court's two orders, the first of which remanded the matter to the Commission and the second confirming the Commission's opinion following remand. We have taken the following facts from the Commission's decisions in order to provide a brief understanding of the case.

¶ 7 Claimant has worked for the employer as a bus driver since March 2001. On November 18, 2008, she suffered a work injury in the form of a minor right ankle sprain that resulted in no lost time from work and a lump-sum settlement based on a 3% loss of use of her right foot. On May 21, 2009, claimant suffered a non-work related injury to the lateral side of her right ankle when a motorcycle fell on it (motorcycle accident). On June 16, 2009, as a result of the motorcycle-accident injury, claimant underwent right ankle surgery consisting of a closed reduction right tibiotalar joint and open reduction with internal fixation right distal fibula. An October 10, 2009, magnetic resonance imaging (MRI) of claimant's right ankle demonstrated, in relevant part, an eight millimeter anterior lateral talar dome osteochondral lesion. On December 3, 2009, claimant returned to full duty work. Claimant testified she suffered no discomfort in her right ankle between December 3, 2009, and February 13, 2010, and did not miss any time from work. The records of claimant's surgeon, however, indicated claimant complained of severe pain in her right ankle as late as November 2009.

¶ 8 On February 13, 2010, claimant was operating a bus when she was "t-boned" by another vehicle. Claimant immediately felt pain when she applied the brake and was taken by ambulance to Norwegian Hospital. X-rays of claimant's right ankle showed no evidence of acute fracture or subluxation and she was discharged with a diagnosis of a right ankle sprain. On February 15, 2010, claimant sought treatment at the Occupational Medical Center of Chicago and was referred to Dr. Nam, an orthopedic surgeon.

¶ 9 Claimant first saw Dr. Nam on February 18, 2010, complaining of right ankle pain. Dr. Nam ordered physical therapy and kept claimant off work. On May 20, 2010, claimant underwent an MRI of her right ankle which showed an osteochondral lesion along the anterolateral talar dome with loose bodies within the right ankle joint. Dr. Nam, who at that time was unaware of the October 2009 right ankle MRI results, recommended arthroscopic intervention to remove the loose bodies.

¶ 10 On June 17, 2010, claimant saw Dr. George Holmes, an orthopedic surgeon, at the request of the employer. Dr. Holmes opined that claimant's right ankle pain was the result of posttraumatic arthritic changes of her ankle following her June 2009 surgery for the motorcycle-accident injury. He stated that the February 2010 work injury caused only a minor sprain with no significant aggravation of claimant's preexisting condition.

¶ 11 On July 8, 2010, claimant saw Dr. Nam again. Dr. Nam noted claimant's request for surgical intervention had been denied, presumably by the employer. On that date, Dr. Nam also opined, "[t]o a reasonable degree of medical and surgical certainty, I do believe that [claimant's] current ankle condition is secondary to [a] work injury which occurred on February 13, 2010."

¶ 12 Claimant returned to work on July 22, 2010, but while driving she felt pain in

her right foot upon applying the bus brakes. On that day, she was treated at West Suburban Hospital for "worsening right ankle pain." X-rays of her right foot revealed that one of the four pins retaining the plate from her prior surgery was extending through the fibula into the adjacent cortex of the tibia. Claimant was discharged with a diagnosis of right ankle pain.

¶ 13 On July 29, 2010, claimant followed up with Dr. Nam and he restricted her from work. On October 1, 2010, Dr. Nam performed arthroscopic surgery on claimant's right ankle for an osteochondral lesion, anterolateral talus impingement syndrome anterolatera and anteromedial gutter and right ankle synovitis.

¶ 14 On October 8, 2010, Dr. Nam authored a letter. This letter is included in the record on appeal. In the letter, Dr. Nam noted that prior to October 8, 2010, he had not been aware of claimant's October 2009 right ankle MRI or July 2010 X-rays. After reviewing the respective images, however, Dr. Nam opined:

"The findings of these studies in comparison to [claimant's] May 21, 2010[,] MRI would lead me to conclude that [claimant's] work injury on February 13, 2010[,] was a significant aggravation to a preexisting injury to her right ankle. In other words, I do feel that [claimant's] work injury on February 13, 2010[,] both accelerated and aggravated her current ankle condition."

¶ 15 On February 4, 2011, the arbitrator issued his decision. As stated, he found the current condition in claimant's right ankle to be causally connected to the February 13, 2010, work accident, and awarded her benefits under the Act. In finding a causal connection, the arbitrator noted that claimant returned to work on December 3, 2009, and he found credible her testimony that she did not experience any pain in her right ankle between her return to work and

the February 2010 accident. In addition, the arbitrator cited Dr. Nam's opinion that claimant's right ankle condition was secondary to the February 2010 work accident while noting he was not persuaded by the causation opinion of Dr. Holmes who suggested the February 2010 work accident did not result in "significant aggravation." The arbitrator awarded claimant 50 6/7 weeks' TTD benefits for the periods of February 14, 2010, through July 21, 2010, and July 23, 2010, through December 14, 2010; expenses for all medical services rendered; and prospective medical care in the form of physical therapy. On December 6, 2011, the Commission affirmed and adopted the arbitrator's decision and remanded the matter to the arbitrator for further proceedings pursuant to *Thomas*.

¶ 16 The employer sought judicial review of the Commission's decision. On April 26, 2013, the circuit court remanded the matter to the Commission for further determination of whether (1) a compensable accident occurred on July 23, 2010; (2) claimant was entitled to TTD benefits from July 23, 2010, through December 14, 2010; and (3) claimant was entitled to an award of medical expenses for services rendered after July 23, 2010. (We note that claimant returned to work on July 22, 2010, and was treated at the hospital on that date for pain in her right foot.) The court noted that Dr. Nam's causation opinion—upon which the Commission relied in making its determination—was "made without full knowledge of all the facts" and was "not supported by any reasoning or analysis." Accordingly, the court found the Commission's reliance on Dr. Nam's causation opinion was not supported by the record.

¶ 17 On November 4, 2014, following remand from the circuit court, the Commission concluded claimant (1) did not sustain a compensable accident on July 23, 2010; (2) was not entitled to TTD benefits from July 23, 2010, through December 14, 2010; and (3) was not entitled to medical benefits for services rendered on or after July 22, 2010.

¶ 18 On December 18, 2014, the circuit court confirmed the Commission's decision. This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 On appeal, claimant challenges the circuit court's original order of remandment, asserting the court abused its discretion by substituting its own evaluation of Dr. Nam's credibility for that of the Commission.

¶ 21 Initially, we note the circuit court's original order remanding the case to the Commission for further consideration was interlocutory, and therefore, could not have been appealed by claimant. *Wellman-Lord, Inc. v. Industrial Comm'n*, 48 Ill. 2d 533, 535, 271 N.E.2d 881, 882 (1971). However, now that the final judgment confirming the Commission's decision on remand is before us, we may review the propriety of the circuit court's initial decision to remand. *Id.*

¶ 22 Next, we consider the employer's contention that claimant's failure to provide a complete record should result in the affirmance of the Commission's decision on remand. See *Lawlyes v. Industrial Comm'n*, 246 Ill. App. 3d 226, 231, 614 N.E.2d 547, 551 (1993) ("An appellant has the duty to present a complete record on appeal and, in the absence of an adequate record, it will be presumed that the evidence is sufficient to support a judgment appealed therefrom."). Ordinarily, a failure to provide a complete record to the extent that occurred here would be fatal to the appellant's case on appeal. However, due to the peculiar nature of the circuit court's initial decision which we determine requires reversal and remandment, the absence of a complete record does not doom the appellant.

¶ 23 Our review of the record in this case reveals the issues which were originally before the Commission were limited to (1) whether claimant's condition of ill-being in her right

ankle was causally related to the accidental injury she sustained on February 13, 2010; (2) whether the medical services provided to claimant were reasonable and necessary and whether she was entitled to prospective medical care in the form of physical therapy; and (3) the propriety of the Commission's TTD award. The employer, in its brief before the circuit court, however, asserted the issues on review included whether claimant: (1) "sustained a compensable injury that arose out of her employment after the date of [July 23, 2010,] and through such time as the case was tried"; (2) was entitled to TTD benefits for the period from July 23, 2010, through December 14, 2010; and (3) was entitled to an award for medical expenses incurred after July 23, 2010. Despite identifying these three issues in its brief before the circuit court, we note the employer then limited its argument to causal connection after June 17, 2010—the date Dr. Holmes examined claimant. Specifically, the employer argued as follows:

"[S]ubsequent to June 17, 2010[, claimant's] current condition of ill[-]being is not causally related to the accident of February 13, 2010; denies [claimant] is entitled to TTD benefits after June 17, 2010; and that any medical services rendered after June 17, 2010[,] are not causally related to the February 13[, 2010] accident but are instead related to the normal sequelae of [claimant's] prior ankle fracture."

¶ 24 Notwithstanding the limited scope of the employer's argument, the circuit court addressed the three issues laid out in the employer's brief, issues the employer had not raised before the Commission. Regarding the first issue, the court found, "it cannot be said that the Commission concluded that a compensable injury arose out of [claimant's] employment on July 23, 2010[,]" since the Commission made no express finding as such and "[i]ts analysis revolved

around the February 13, 2010[,] injury." Second, the court noted, it was "confused as to why [claimant] was awarded [TTD] benefits from February 14, 2010[,] through July 21, 2010, and then from July 23, 2010[,] through December 14, 2010." According to the court, "[t]his two[-]day gap seems to imply that the Commission found the existence of another compensable accident at some point." Finally, while the court made no express finding as to whether claimant was entitled to any medical expenses for services rendered after July 23, 2010, it specifically noted the Commission's finding that the employer was liable for claimant's October 1, 2010, ankle surgery was against the manifest weight of the evidence as it was based on Dr. Nam's causation opinion which the court concluded was "without support in the record."

¶ 25           Based on the above, we find the circuit court erred in remanding to the Commission for a determination on issues which were not previously before it. See *Manis v. Industrial. Comm'n*, 230 Ill. App. 3d 657, 662, 595 N.E.2d 158, 161-62 (1992) ("it was error for the trial court to remand a matter to the Commission which was never raised before the Commission at the appropriate time"). In particular, no issue was raised before the Commission concerning whether claimant suffered a separate compensable injury on July 23, 2010, or whether claimant was entitled to TTD benefits as a result of a separate compensable injury. Nor did the employer present such arguments before the circuit court. It appears to us that the circuit court's confusion stemmed from the Commission's awards of TTD for the periods of February 14, 2010, through July 21, 2010, and July 23, 2010, through December 14, 2010. As noted, the circuit court concluded, "[t]his two[-]day gap seems to imply that the Commission found the existence of another compensable accident at some point." We disagree. This one-day gap in the TTD award—not a two-day gap—is easily explained by the fact that claimant had returned to work on July 22, 2010, only to experience pain in her right foot upon applying the bus brake.

Obviously, claimant would not be entitled to TTD benefits for a day she worked for the employer.

¶ 26 Because the circuit court's original order of remandment was error, we remand to the circuit court for a new judicial review of the Commission's original decision.

¶ 27 **III. CONCLUSION**

¶ 28 For the reasons stated, we reverse the circuit court's final order confirming the Commission's decision on remand, vacate the Commission's decision on remand, reverse the circuit court's original order of remandment, and remand to the circuit court for a new judicial review of the Commission's original decision.

¶ 29 Reversed in part; vacated in part; cause remanded.