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2016 IL App (1st) 151922WC-U

Order filed: July 22, 2016

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

LARRY POPE,)	Appeal from the Circuit Court
)	of Cook County, Illinois.
Plaintiff-Appellee,)	
)	
v.)	Appeal No. 1-15-1922WC
)	Circuit No. 14-L-50890
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, <i>et al.</i> , (City of Chicago,)	Honorable
)	James M. McGing,
Defendants-Appellants).)	Judge, Presiding.

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

ORDER

- ¶ 1 *Held:* The Commission's determination that the claimant failed to prove a causal relationship between his current condition of ill-being and his employment was not against the manifest weight of the evidence where the Commission found the claimant not credible and gave greater weight to contrary medical opinion testimony as to causation.
- ¶ 2 The claimant, Larry Pope, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)), seeking benefits for injuries to his left eye allegedly sustained while employed as a street maintenance worker for the City of

Chicago (employer). Following a hearing, the arbitrator found that the claimant's condition of ill-being related to his left eye was the result of repetitive trauma causally related to vibrations resulting from his repetitive use of a jackhammer. The arbitrator found that the injuries arose out of and in the course of the claimant's employment and awarded the claimant a permanent partial disability (PPD) benefit equal to 100% of the loss of the use of the left eye pursuant to section 8(e) of the Act. 820 ILCS 305/8(e) (West 2008). The claimant neither sought nor was he awarded temporary total disability (TTD) benefits or medical expenses.

¶ 3 The employer sought review of the arbitrator's award before the Illinois Workers' Compensation Commission (Commission), which rejected the arbitrator's decision, holding that the claimant had failed to establish that his condition of ill-being was the result of an industrial accident causally related to his employment. The claimant sought judicial review of the Commission's decision before the circuit court of Cook County. Judge Lopez Cepero issued an order remanding the matter to the Commission with instructions to make specific findings regarding the credibility of certain witnesses. On remand to the Commission, following briefing and oral argument, the Commission again issued a decision finding that the claimant had failed to establish his burden of proving that he had suffered an industrial accident or that his current condition of ill-being was causally related to his employment.

¶ 4 The claimant again sought judicial review of the Commission's decision in the circuit court of Cook County. Judge James McGing issued an order reversing the Commission's decision and reinstating the arbitrator's award. The circuit court's order, constituted a final and appealable order. The employer then filed this timely appeal.

¶ 5 **FACTS**

¶ 6 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on June 14 and 21, 2012.

¶ 7 The claimant testified that he had been employed by the employer from 1981 through 2007. Beginning in 1984, the claimant worked in the electrical department, with job duties that included operating a hydraulic jackhammer, weighing approximately 100 pounds, which the claimant used to break up concrete pavement. The claimant testified that operating the jackhammer was a regular part of his job duties, and he was the only member of his crew to operate the jackhammer. He testified that on some days he operated the jackhammer all day, some days he operated the jackhammer intermittently throughout the day, while on some other days he might not operate a jackhammer at all. He further testified that operating a jackhammer caused his entire body to vibrate. The claimant last operated a jackhammer on September 20, 2007.

¶ 8 The claimant testified that by August 2007, he began experiencing pain in the left side of his jaw after undergoing some dental work. He testified that the pain persisted even after his dentist, Dr. Sumeet Bagai, prescribed pain medication and antibiotics. In September 2007, he sustained injuries to the left side of his neck and jaw while trying to unload the jackhammer off a truck bed. He reported the incident to his supervisor. The claimant did not think his injuries were serious, and after resting and applying an ice pack to his neck, he returned to work.

¶ 9 On October 3, 2007, the claimant returned to Dr. Bagai with reports of continuing left side jaw pain. Dr. Bagai's treatment notes confirm the claimant was treated on that date for persistent pain in the left jaw.

¶ 10 The claimant further testified that, on October 9, 2007, while attending physical therapy for a work injury to his leg, he experienced a sudden, intense pain in his neck. He noticed that at the same time his vision "was getting dark." The physical therapist suggested that he go to an eye doctor who had an office in the same building. The claimant treated that same day at Chicago Eye Specialists, where he reported that he could no longer see out of his left eye. The

claimant was urged to seek emergency care at nearby Mercy Hospital. Treatment records from Chicago Eye Specialists were consistent with the claimant's testimony. The claimant testified that he had experienced no vision problems prior to that date.

¶ 11 The claimant then drove himself to Mercy Hospital. The claimant testified that he was involved in a minor car accident while in route which was caused by his difficulty seeing.

¶ 12 Treatment records from Mercy Hospital established that on October 9, 2007, the claimant presented in the emergency department with complaints of sudden loss of vision in the left eye, preceded by a short period of blurry vision and dark spots. The written record contained the following: "Last Friday [claimant] went to his dentist with [complaints of] pain on the left side of neck and thought of a toothache. Today in early morning [claimant] saw dots and around 9:00 a.m. could not see on left eye. Went to eye doctor in same building where he is doing therapy for his back pain. From eye doctor referred for sudden loss of vision." The report further noted that the claimant reported a 3 pack per day smoking habit for 20 years. The claimant also acknowledged daily marijuana use and occasional cocaine use. The claimant was admitted to the hospital for further testing and observation. Diagnostic tests revealed carotid artery dissection and a large thrombosis formation of the left central retinal artery. The claimant was discharged on October 15, 2007. The claimant was 49 years of age at the time.

¶ 13 An undated letter from the claimant's treating physician at Mercy, Dr. Anne Schultz, reported: "[claimant] suffered a stroke on October 9, 2007. This occurrence left him with significant loss of vision in the left eye. Diagnostic testing at Mercy Hospital revealed that he suffered a left carotid artery dissection several weeks ago. This was most likely a result of his work operating a jackhammer. He then threw a blood clot from the dissected artery into the left optic artery, which caused the acute stroke event for which he was hospitalized." Dr. Shultz released the claimant to return to work with a restriction of no operating a jackhammer.

¶ 14 The claimant produced a written prescription form signed by Dr. Schultz, dated October 15, 2007, which stated: “This is to certify that [the claimant]’s diagnosis of carotid dissection w/ thromboembolism to L eye w/ central retinal art. occlusion is job-related.” The claimant testified that he gave the form to his supervisor.

¶ 15 The claimant testified that after the incident on October 9, 2007, he had no vision in his left eye. He acknowledged that he had lifted weights intermittently for years prior to the incident, but denied sustaining any injury as a result of weight lifting. The claimant was cross-examined regarding the number of workers compensation claims he had filed over his work career. He denied knowledge of the number, but agreed that if Commission records showed he had filed nine claims, the records were most likely accurate.

¶ 16 Dr. Jeffery Kramer, testified by evidence deposition regarding his care and treatment of the claimant. Dr. Kramer was chief of Neurology and director of the Stroke Program at Mercy Hospital. Dr. Kramer opined that the claimant suffered an artery dissection that caused an occlusion which precipitated a stroke causing the claimant’s vision loss. He opined to a reasonable degree of medical certainty that the claimant’s condition was caused by both vibrations from operating the jackhammer, as well as a traumatic injury resulting from being hit with the jackhammer when unloading it from a truck. Additionally, Dr. Kramer discounted other possible causes of the claimant’s condition, specifically smoking and drug use. On cross-examination, Dr. Kramer acknowledged that he was unaware of how often the claimant operated a jackhammer in the course of his employment. He also acknowledged that the claimant last operated a jackhammer approximately 4 weeks prior to the onset of the stroke.

¶ 17 Dr. Karen Levin testified for the employer. Dr. Levin practiced general neurology and testified that only about 15% of her practice dealt with stroke patients. She testified that she was board certified in neurology. She testified that she conducted a review of the claimant’s medical

records, but did not personally examine the claimant. She agreed with Dr. Kramer's diagnosis that the claimant had suffered a left carotid artery dissection that caused a clot to form and break off, thus occluding the left retinal artery and causing the vision loss. However, she differed with Dr. Kramer as to causation. She opined that the dissection and subsequent occlusion were not related to jackhammer use, which she testified was not commonly acknowledged in the medical literature to be a cause of dissections. While Dr. Levin did not offer an opinion as to the exact cause of the claimant's condition, she listed a variety of causes commonly associated with arterial dissections, including vasculitis, cigarette smoking, obesity, weight lifting, and cocaine use. She testified that certain diagnostic testing results for the claimant showed possible vasculitis. Dr. Levin noted that recent literature had shown increase in arterial dissections with weightlifters.

¶ 18 Dr. Levin further opined that four weeks between the last time that the claimant operated a jackhammer and the date of onset of the ocular occlusion would contraindicate causation. She opined the same regarding a four week delay after the claimant allegedly being struck by the falling jackhammer and the onset of the occlusion. She opined that symptoms would be expected to occur within the first week. She acknowledged on cross-examination that the claimant may have suffered neck pain within the first week after being hit with the jackhammer.

¶ 19 Dr. Levin noted in her testimony that she reviewed a report prepared by a Dr. David Allen, at the request of the employer regarding a different compensation claim by the claimant. The report contained the follow statements: "of note, in that evaluation, there was no specific mention of any day he was hit with a jackhammer, but states that he had been jarred on multiple occasions while driving in the back of truck;" and "[claimant] states that in the past, he has been a power lifter. He wears the neck piece of power lifter. He denies power lifting in the period of

time prior to his injuries” and “It should be stated that this patient specifically denies being hit in the head with a jackhammer.”

¶ 20 The employer presented, over claimant’s objection, daily work reports for June 2007 through September 20, 2007, that purported to show how often the claimant used a jackhammer during that period. Additionally, the claimant’s supervisor during that period of time, Clayton Armstrong, testified that when the claimant used a jackhammer, he operated it for between 45 minutes and 2 hours, never more. Based upon the daily work reports and Armstrong’s testimony, the Commission found the claimant not credible regarding his testimony that he operated a jackhammer on a nearly daily basis for 4 to 8 hours per day.

¶ 21 The Commission noted several other areas of inconsistencies in the claimant’s statements. On the Eye Specialist intake form dated October 9, 2007, the claimant reported that he had not recently operated a jackhammer and had no recent incident of trauma. Yet on October 12, 2007, the claimant reported in a different medical intake form that he had hit his head with a jackhammer. Then on June 30, 2008, he again denied head injury when examined by Dr. Allen. Additionally, the Commission noted that the claimant at various times denied ever smoking, stated he smoked 3 packs per day for 20 years, and stated that he smoked 3 cigarettes per day. Similarly regarding drug use, the claimant variously denied any drug use, admitted to daily marijuana use, and occasional cocaine use. Based upon these inconsistencies, the Commission gave the claimant’s testimony on all issues, very little credence.

¶ 22 Based upon the conflicting medical opinion testimony and the conflicting statements made by the claimant to the various medical providers, and the claimant’s lack of credibility, the Commission determined that the claimant had failed to establish a causal relationship between his work activities and his current condition of ill-being. Regarding the medical opinions, the Commission found Dr. Levin’s opinion more persuasive than Drs. Kramer and Schultz, primarily

based upon its finding that the claimant was not truthful in describing the frequency and duration of his work duties.

¶ 23 The claimant sought review in the circuit court of Cook County, which found that the decision of the Commission of the Commission was against the manifest weight of the evidence. Specifically, the court found that the Commission relied upon inadmissible hearsay, *i.e.*, the claimant's statement to Dr. Allen referenced in Dr. Levin's testimony and the daily work reports. The court reasoned that without that evidence, the only conclusion available to the Commission was that the claimant's current condition of ill-being was causally related to his employment. The employer then filed this timely appeal.

¶ 24 ANALYSIS

¶ 25 The employer maintains that the circuit court erred in finding that the Commission's decision was against the manifest weight of the evidence. We note initially that when a party appeals to the appellate court following an entry of a judgment by the circuit court in a workers' compensation proceeding, it is the decision of the Commission, not the judgment of the circuit court which is subject to review. *Farris v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130767WC ¶ 72.

¶ 26 Here, the Commission determined that the claimant failed to establish a causal connection existed between his employment and his current condition of ill-being. 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 and Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). A work-related injury need not be the sole or principal causative factor, as long as it was *a* causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (1993). A finding by the Commission that a claimant's injuries are causally related to employment activities is a question of fact and the finding will not

be overturned unless it is against the manifest weight of the evidence. *Sisbro*, 207 Ill. 2d at 205. A finding by the Commission is against the manifest weight of the evidence where the opposite conclusion is clearly apparent. *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910 (2006). It is the exclusive purview of the Commission “to resolve conflicts in evidence, draw reasonable inferences from the evidence, and assess the credibility of witnesses.” *Lenny Szarek, Inc. v. Illinois Workers' Compensation Comm'n*, 396 Ill. App. 3d 597, 603 (2009). If there is sufficient factual evidence in the record to support the Commission’s determination, it will not be disturbed on appeal. *Beattie v. Industrial Comm'n*, 276 Ill. App. 3d 446, 450 (1995). Whether a reviewing court might have reached the same conclusion is not the test of whether the Commission’s decision is supported by the manifest weight of the evidence; rather the appropriate test is whether there is sufficient evidence in the record to support the Commission’s determination. *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866 (2010).

¶ 27 In the instant matter, before addressing the question of the admissibility of certain evidence, we will review the entire record to determine whether the Commission’s determination was against the manifest weight of the evidence. We note that the Commission’s ultimate determination rested primarily upon two points: the claimant’s lack of credibility and the weight accorded the competing medical opinions as to causation.

¶ 28 Regarding the claimant’s credibility, we find the record amply supports the Commission’s findings. Even if the statement attributed to him in Dr. Allen’s report and the work reports had not been allowed in evidence, the record is replete with inconsistencies in the claimant’s testimony. It is well-settled that when a witness is not credible on any material point, the Commission may disregard the uncorroborated testimony of the witness regarding other issues. *McDonald v. Industrial Comm'n*, 39 Ill. 2d 396 (1968). Moreover, on the key issues of

how often the claimant used a jackhammer and whether he was struck by one falling off the truck, the properly admitted evidence was contradictory on those key points. The record is clear that the claimant gave contradictory statements to different medical providers, and Armstrong's testimony alone, unsupported by the work reports, was sufficient to place the claimant's version of whether an accident occurred into question.

¶ 29 Similarly, the contrasting medical opinion testimony regarding causation between Dr. Levin and Dr. Kramer did not rest solely upon the Dr. Levin's reference to the statement made by the claimant to Dr. Allen that found its way into Dr. Allen's report. The Commission's decision to give more weight to Dr. Levin's opinion than Dr. Kramer's was supported by references to the medical literature regarding jackhammer use versus weightlifting as potential causes of strokes similar to that suffered by the claimant, by the fact that there was a four week delay in the onset of the symptoms following the alleged incident involving a jackhammer striking the claimant, and by the fact that Dr. Kramer's opinion was dependent upon information given to him by the claimant, which the Commission determined to be false.

¶ 30 Given the Commission's credibility determinations regarding the claimant, and weight given to competing medical opinions regarding causation, it cannot be said that the Commission's determination that the claimant failed to establish the requisite causal connection between his employment and his current condition of ill-being was against the manifest weight of the evidence.

¶ 31 The claimant next maintains that the Commission reached its conclusion on causation only by relying upon inadmissible evidence, *i.e.*, the claimant's statement to Dr. Allen referenced by Dr. Levin. As such, he maintains, the circuit court properly found that the Commission's decision was against the manifest weight of the evidence. The claimant's argument lacks merit. As previously discussed, the statement made by the claimant that was contained in the written

report of Dr. Allen was not essential to the Commission's ultimate determination. In that regard, any erroneous admission of the evidence was harmless. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 533 (2007) (where the record as a whole supports the Commission's finding, any erroneously admitted evidence is harmless).

¶ 32 For the foregoing reasons, the Commission's determination that the claimant failed to prove a causal relationship between current condition of ill-being and his employment was not against the manifest weight of the evidence.

¶ 33 CONCLUSION

¶ 34 The judgment of the circuit court which reversed the decision of Commission is reversed and the Commission's decision is reinstated.

¶ 35 Judgment reversed. Commission decision reinstated.