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2016 IL App (1st) 153587WC-U

FILED: December 23, 2016

NO. 1-15-3587WC

IN THE APPELLATE COURT

OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

JULIAN ALEXANDER,)	Appeal from
)	Circuit Court of
Appellant,)	Cook County
)	No. 15L50449
v.)	
THE ILLINOIS WORKERS' COMPENSATION)	
COMMISSION <i>et al.</i> (Yellow Roadway Corp.,)	
Appellees).)	Honorable
)	Edmund Ponce De Leon,
)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Hudson, and Moore
concur in the judgment.

ORDER

¶ 1 *Held:* The Commission's determination that claimant failed to prove a work-related accident was not against the manifest weight of the evidence

¶ 2 On April 13, 2011, claimant, Julian Alexander, filed an application for adjustment of claim pursuant to the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2010)), seeking benefits from the employer, Yellow Roadway Corporation, for injury to "[m]ultiple parts" of his body as the result of a January 19, 2011, work accident. Following a hearing, the arbitrator found claimant sustained a compensable injury and awarded him benefits

under the Act. On review, the Illinois Workers' Compensation Commission (Commission), with one commissioner dissenting, reversed the decision of the arbitrator, finding that claimant failed to establish a work-related accident. On judicial review, the circuit court confirmed the Commission's decision.

¶ 3 On appeal, claimant challenges the Commission's finding that he failed to prove an accident arising out of and in the course of his employment. He further requests that this court modify the arbitrator's decision to award him (1) penalties and attorney fees and (2) ERISA plan benefits. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The following evidence relevant to the disposition of this appeal was elicited at the July 21, 2014, arbitration hearing.

¶ 6 Claimant testified that he was 63 years old and had worked for the employer as a truck driver since October 1984. At approximately 1:20 p.m. on January 19, 2011, claimant was at work conducting a pre-trip inspection of his truck and trailer in the employer's truck yard. Claimant stated he had been at the rear end of the trailer and was walking toward the center of the trailer on the passenger side when he slipped on a patch of snow and ice and fell. When he fell, claimant's right hand hit the trailer and his left hand, buttocks, and back hit the ground. No one witnessed the fall. At the time of the fall, he had been looking up at the "trailer flights" and the door, which was ajar and appeared to have a defect. After the fall, claimant felt pain in his back and buttocks, and both wrists.

¶ 7 Claimant testified that after the fall, he continued working. He drove the trailer to the repair shop on the employer's property and, after the defect on the trailer had been repaired, he set out to deliver the trailer to Global One in Chicago. Prior to leaving the truck yard,

however, he stopped by the guard shack to pick up discharge papers. He did not tell the two dispatchers who were working at the guard shack that he had fallen. After dropping off the trailer at Global One, claimant continued on to another company where he picked up a second trailer and then drove back to the employer's truck yard, arriving at approximately 6:37 p.m. At that time, claimant testified his back and buttocks were sore and he had "some pain" in his leg.

¶ 8 Claimant testified that he worked for the employer on January 20, 2011, doing "drops and hooks" which meant he transferred trailers from one location to another. On January 21, 2011, he awoke with soreness in both legs and pain in his back. Claimant called the employer and reported he would not be in because he was not "feeling well." He testified that he did not immediately seek treatment for his back pain because he "thought [he] could walk it off" as he had done on previous occasions.

¶ 9 On January 22, 2011, claimant developed chest pains and after speaking to his cardiologist, he reported to the emergency department of St. John's Hospital where he was admitted for treatment of a preexisting heart condition. According to claimant, he informed emergency room personnel that he was experiencing chest pain, leg pain and back pain, and that he "had a fall a few days earlier." However, the emergency room record from that date reflects that claimant

"presented to the emergency room with the complaints of leg pain and chest pain. The patient stated that he was in his usual state of health and apparently for the past 4 days he had been having increasing pain in both the lower extremities with no associated history of trauma, fall, back pain, urinary or bowel symptoms. He stated that he works as a truck driver and apparently had been having increased

pain over the past 3-4 days to the point that it was difficult for him to stand and ambulate."

¶ 10 Claimant testified that while he was in the hospital, he informed hospital staff that he had fallen and hurt his back, and he received pain medication for his back pain. On January 24, 2011, claimant underwent a lumbar magnetic resonance imaging (MRI) scan which revealed a "disc bulge and protrusion at L3-L4 causing mild foraminal narrowing, moderate central canal stenosis, a large disc bulge with annular tear at L4-L5, and small bulge with annular tear at L1-L2."

¶ 11 A January 25, 2011, hospital record indicates claimant's bilateral lower extremity pain "may be related to a recent fall." A progress report from the same date states, "symptoms began last w[ee]k—6 days ago when he fell backwards." A surgical evaluation was recommended.

¶ 12 The record shows that on January 26, 2011, a nurse from the Northwestern Orthoepedic Institute summarized a phone conversation with claimant as follows:

"SPOKE WITH PATIENT TODAY[,] HE IS AT ST. JAMES HOSPITAL S/P FALL AT WORK C/O BILATERAL LEG PAIN AND WEAKNESS. HE STATED THAT THEY DID AN MRI AND TOLD HIM THAT IT WAS POSSIBLY AN ISSUE WITH HIS BACK."

Claimant was discharged from the hospital later that day.

¶ 13 On January 27, 2011, claimant saw Dr. Srjdan Mirkovic at Northwestern Orthopaedic Institute. Dr. Mirkovic's records indicate that claimant reported "[b]ilateral leg pain radiating to the buttocks and anteriorly/posterior to the ankles" and that his symptoms began "a week ago when he slipped and fell landing on his back." He further stated that claimant had

been off work over the last week and planned to file a workers' compensation claim that day. Dr. Mirkovic noted that a review of claimant's lumbar MRI revealed "severe spinal stenosis at L3-4 and L4-5 secondary to a central and paracentral disc herniation superimposed on a congenitally narrowed spinal canal." Dr. Mirkovic recommended that claimant obtain a cardiac evaluation and consult with his cardiologist "for possible prompt surgery."

¶ 14 On January 28, 2011, claimant reported his work accident to the employer through his supervisor, Elaina. According to claimant, he told Elaina he "had slipped and fallen in the [truck] yard and [he] was going to fill out an accident report."

¶ 15 A typewritten chronology, dated March 3, 2011, and signed by claimant, was admitted into evidence by claimant. In this document, claimant stated that on January 19, 2011, he was performing a pre-trip inspection of a trailer when he "slipped on a patch of ice and fell backward [onto his] back and buttocks. I didn't think at the time that I was seriously injured. Because I've taken some serious falls before in performing the physical *** work we do as truckers and have walked it off. I thought I had this time since I really only felt soreness." Claimant went on to note that only after meeting with Dr. Mirkovic on January 27, 2011, and finding out he experienced "a severe injury" to his spine from his fall, did he think to report the accident to the employer.

¶ 16 On January 31, 2011, Dr. Mirkovic performed an L3-L4 laminectomy, an L5 hemilaminectomy, and an L4-L5 left partial discectomy. Claimant continued treatment with Dr. Mirkovic postoperatively through January 29, 2013.

¶ 17 At the time of arbitration, claimant testified that he was unable to work following the accident but was still employed by the employer. Claimant further stated that his back surgery had alleviated some of his back pain, but he continued to experience a constant, sharp

pain in his lower back which limited his activities. He denied having experienced any low back or thigh pain, or seeking treatment for the same, prior to the alleged work accident.

¶ 18 Jack Hayward testified for the employer. He had worked for the employer for 31 years and had worked with claimant for approximately 18 to 20 years. For the past four years, Hayward held the position of area safety manager. According to Hayward, the employer had a policy that required employees to immediately report all accidents and injuries. The employer's policy was introduced into evidence and states, in relevant part, "[a]ll injuries, accidents, and hazardous material spills must be accurately reported to your supervisor immediately and applicable written reports completed."

¶ 19 Hayward stated that the employer's policy to immediately report accidents and injuries had been in place during his entire 31-year term of employment and was "the number one work rule." Hayward testified that employees are informed of the rule at the time of hire, as well as "[at] least eight to ten times per year" during meetings. Hayward further stated that claimant had helped to train employees "for a considerable number of years" in a safety training program during which the employer's policy regarding the reporting of work accidents was discussed. In addition, Hayward testified that claimant's union had a policy that required all injuries and accidents to be immediately reported so that a proper investigation could be conducted. Hayward did not believe claimant injured himself at work on January 19, 2011, because claimant "taught the rules, knows what the rules are, knows what would have been expected of him."

¶ 20 The employer introduced into evidence three prior accident reports filled out by claimant for accidents occurring in August 1989 (injured while pushing a skid to the rear of a trailer and lifting it up on to the dock), July 1999 (injured while lifting a crate off the back of a

trailer and lowering it to the ground), and July 2006 (injured when his truck was hit by a car). The reports show that on each of these three occasions, claimant reported the accident to the employer on the date of the accident.

¶ 21 During cross-examination, claimant testified he had served on the employer's safety committee for "20-something years," and that in that capacity, he had instructed drivers regarding the importance of reporting work injuries immediately. While he was aware of the policies of the employer and his union requiring employees to immediately report accidents, claimant stated that he understood these policies to apply only to vehicle accidents. Claimant explained that he reported the July 1999 work accident immediately because another person, the resident of the house where he was delivering the crate, was helping him lift the crate and fell. According to claimant, he "didn't know if [the resident] was going to report it *** so [claimant] reported it that same day." Claimant did not offer an explanation for his immediate reporting of the August 1989 accident which was not a vehicle accident.

¶ 22 On October 8, 2014, the arbitrator issued his decision in the matter. He found that claimant sustained an accident that arose out of and in the course of his employment and his current condition of ill-being in his low back was causally related to the work accident. He awarded claimant (1) 105 5/7 weeks' temporary total disability (TTD) benefits for the period of January 21, 2011, through January 29, 2013; (2) 250 weeks' permanent partial disability (PPD) benefits, finding claimant's injuries caused a 50% loss of the person as a whole; and (3) medical expenses. The arbitrator declined to award penalties and attorney fees.

¶ 23 On June 2, 2015, the Commission, with one commissioner dissenting, reversed the arbitrator's decision and vacated all awards of compensation, finding that claimant failed to establish a work-related accident occurred on January 19, 2011. Specifically, the Commission

found claimant's "testimony regarding the alleged accident [was] not credible and [was] unsupported by the evidence." It noted that claimant had suffered multiple work injuries in the past and immediately reported them, whereas this time he waited nine days to report. In the Commission's opinion, claimant's delay in reporting called into question his credibility, especially considering his "extensive knowledge regarding safety requirements, his involvement in training new hires regarding safety requirements, and his access to safety requirements and reporting procedures." The Commission further noted claimant's initial report to hospital personnel of "chest pain and bilateral leg pain 'with no associated history of trauma, fall, back pain, urinary or bowel symptoms,' " and that the majority of his initial medical records refer to his chest pain and do not mention a work-related injury. The dissenting commissioner would have affirmed the arbitrator's finding that claimant sustained his burden of proof with regard to the issue of a work-related accident.

¶ 24 On December 2, 2016, the circuit court of Cook County confirmed the Commission's decision.

¶ 25 This appeal followed.

¶ 26 II. ANALYSIS

¶ 27 On appeal, claimant challenges the Commission's finding that he failed to prove an accident arising out of and in the course of his employment. He further requests that this court modify the arbitrator's decision to award him (1) penalties and attorney fees and (2) ERISA plan benefits.

¶ 28 A. Work Accident

¶ 29 Under the Act, an employee's injury is compensable only when it arises out of and in the course of his or her employment. *Tower Automotive v. Illinois Workers' Compensation*

Comm'n, 407 Ill. App. 3d 427, 434, 943 N.E.2d 153, 160 (2011). An injury occurs "in the course of employment" when it "occur[s] within the time and space boundaries of the employment."

Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). An injury "arises out of" employment when "the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Id.*

¶ 30 Whether an injury arose out of and in the course of one's employment is generally a question of fact and the Commission's determination on this issue will not be disturbed unless it is against the manifest weight of the evidence. *Brais v. Illinois Workers' Compensation Comm'n*, 2014 IL App (3d) 120820WC, ¶ 19, 10 N.E.3d 403. "In resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *Id.* "A reviewing court is not to discard the findings of the Commission merely because different inferences could be drawn from the same evidence." *Kishwaukee Community Hospital v. Industrial Comm'n*, 356 Ill. App. 3d 915, 920, 828 N.E.2d 283, 289 (2005). "The appropriate test is whether there is sufficient evidence in the record to support the Commission's finding, not whether this court might have reached the same conclusion." *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013, 944 N.E.2d 800, 803 (2011). "For the Commission's decision to be against the manifest weight of the evidence, the record must disclose that an opposite conclusion clearly was the proper result." *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592, 834 N.E.2d 583, 592 (2005).

¶ 31 Initially, we note that claimant mischaracterizes the basis on which the

Commission denied him benefits under the Act. Specifically, claimant contends that it was "error for the Commission to deny all benefits and find that no work accident occurred simply because [he] reported this accident to his supervisor *** nine days after the accident when, customarily, he would report it immediately after it occurred." According to claimant, the Commission "attempt[s] to set a precedent that cannot be allowed; that an employee must report an accident immediately in order to be eligible for benefits." See *Tommy Oliver v. Illinois Workers' Compensation Comm'n*, 2015 Ill. App. (1st) 144836WC, 46 N.E.3d 914 (holding that a claimant's failure to immediately report an accident to an employer was not a legitimate basis for withholding benefits so long as notice was provided within 45 days of the accident as required by the Act). We note, however, that contrary to claimant's contention, the Commission did not deny benefits because he failed to immediately report the accident. Rather, the Commission denied benefits because it found claimant's testimony was not credible and found that his failure to immediately report the accident, in addition to other factors, served to diminish his credibility. Thus, on review, our focus is on whether the record supports the Commission's denial of benefits on this basis. We find that it does.

¶ 32 Here, the record shows that claimant was aware of both the employer's and the union's policies requiring employees and union members to immediately report accidents. Not only had claimant served on the employer's safety committee for "20-something years" and instructed drivers regarding the importance of reporting work injuries immediately, but the record also shows claimant had a history of immediately reporting work accidents. Further, the evidence contradicts claimant's arbitration testimony that he understood the immediate-reporting policies to apply only to vehicle accidents. As noted, two of the three accidents previously reported by claimant immediately after the respective accidents did not involve vehicle

accidents.

¶ 33 In addition, the record shows that when claimant sought treatment at the hospital's emergency department on January 22, 2011—three days after the alleged work accident—it was at the recommendation of his cardiologist, who he had been seeing due to a preexisting heart condition. The emergency room record from that visit contradicts claimant's testimony that he reported back pain and having suffered a fall "a few days earlier." In particular, the emergency room record shows no indication that claimant complained of back pain. Further, it specifically states that claimant reported no history of trauma or a fall prior to his admission. The first indication in the medical records that claimant suffered a fall was on January 25, 2011, when he reported his bilateral lower extremity and chest pain began "approximately 6 days ago when he fell backwards." Moreover, the first mention of a fall having occurred at work did not appear until January 26, 2011, when a nurse summarized a phone conversation she had with claimant earlier that day.

¶ 34 As stated, it is the Commission's province to make credibility determinations, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. Here, the Commission found that claimant's failure to immediately report the accident as he had done in the past, coupled with his extensive knowledge regarding the employer's safety requirements, and his initial denial of having suffered trauma or a fall, undermined his credibility regarding the alleged work accident. It was on this basis that the Commission denied claimant benefits. The record contains sufficient evidence to support the Commission's findings and, thus, its determination that claimant failed to establish a work-related accident was not against the manifest weight of the evidence.

¶ 35 B. Remaining Issues

¶ 36 Because we find the Commission's determination that claimant failed to prove a work-related accident was not against the manifest weight of the evidence, we need not consider claimant's additional requests that this court modify the arbitrator's decision to award him (1) penalties and attorney fees and (2) ERISA plan benefits.

¶ 37 III. CONCLUSION

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

¶ 39 Affirmed.