

2016 IL App (2d) 150979WC-U  
No. 2-15-0979WC  
Order filed November 8, 2016

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

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EDDIE LESURE,	)	Appeal from the Circuit Court
	)	of Kane County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 15-MR-228
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION and WAL-MART ASSOCIATES,	)	Honorable
	)	David R. Akemann,
Defendants-Appellees.	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Presiding Justice Holdridge and Justices Hoffman, Harris, and Stewart concurred in the judgment.

**ORDER**

¶ 1 *Held:* The Commission's determination that claimant failed to carry his burden of proof regarding causation was contrary to the manifest weight of the evidence where evidence in the record showed a direct causal link between claimant's condition of ill being and his at-work accident.

¶ 2 I. INTRODUCTION

¶ 3 Claimant, Eddie Lesure, appeals an order of the circuit court of Kane County confirming a decision of the Illinois Workers' Compensation Commission (Commission) denying him

certain benefits under the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)). For the reasons that follow, we reverse and remand.

¶ 4

## II. BACKGROUND

¶ 5 Claimant testified that he was injured when he slipped on ice and fell in the parking lot while working for respondent, Wal-Mart Associates on December 26, 2009. That day, he was retrieving cars from outside and bringing them in to the technicians who worked on them. As he went to retrieve a car, claimant testified, he slipped and fell, landing on his left shoulder and head. The parking lot had not been plowed following a snow storm. His left arm went numb. It remained numb for 10 to 15 minutes. He informed his supervisor of the accident, and respondent directed him to go to Dreyer Occupational Health Services. He went to Dreyer three days later.

¶ 6 Doctors initially focused on this left arm. An MRI was performed on that arm. Claimant noted he had no strength in it. He continued treating at Dreyer until April 20, 2010, when he began treating with Dr. Chudik, an arm specialist. Chudik referred claimant to Dr. Schiffman for his hand and Dr. Mark Lorenz for his neck. Lorenz ordered a cervical MRI and discogram. Lorenz told claimant that claimant had two damaged discs, and he recommended a surgical procedure. Claimant continues to experience numbness, fatigue, and a burning sensation in his left arm, and these problems have gotten worse since the accident. Claimant never had any problems with his left arm or neck before the accident. Since he started treating with Lorenz, he has been totally restricted from working. Respondent has not authorized any treatment of claimant's neck.

¶ 7 On cross-examination, claimant testified that he was not restricted from driving. Claimant reiterated that he hit his head when he fell. He disagreed with the records of Dr. Christopherson (the first doctor that examined him at Dreyer) that stated he did not hit his head

during his fall and that he had a good range of motion in his neck. He agreed that he did not experience immediate neck pain. He later disagreed with the records that stated he did not have neck pain. Respondent initially accommodated his work restrictions.

¶ 8 Colleen Seager then testified that respondent was able to accommodate claimant's light-duty restrictions. She also testified that claimant was terminated for a violation of respondent's personal-conduct policy.

¶ 9 Dr. Mark Lorenz testified via evidence deposition. Lorenz testified that he is a board-certified orthopedic surgeon. He first saw claimant on May 6, 2010. Claimant reported to Lorenz that he fell in a parking lot at work, striking his head and injuring his arm and neck. Lorenz ordered a cervical MRI. Claimant showed two indicators of radicular irritation: a positive Spurling test and "pain radiating down the C6-7 dermatome into the dorsum of the hand." Lorenz opined that claimant's fall caused his condition of ill being. Because claimant had an injury to his arm as well, the radiculopathy was "very well masked" initially. Claimant's MRI showed, at the C5-C6 level, "endplate spurring and a disc bulge." The bulge "was significant enough to compromise the size of the canal at the C5-C6 level." He opined that this was "a degenerative condition aggravated by a traumatic event." Lorenz ordered a discographic study, which was performed on October 8, 2010. It indicated "concordant pain" and rupturing at the C5-C6 and C6-C7 levels. Lorenz recommended a decompression and fusion. He opined that the need for this surgery was caused by claimant's at-work accident.

¶ 10 On cross-examination, Lorenz stated that given the length of time claimant has been experiencing pain, he did not think conservative measures would benefit claimant. That claimant reported arm pain to doctors that treated him earlier would be consistent with a cervical injury. These doctors likely did not identify the cervical component of the injury because they were

focusing on claimant's arm. However, Lorenz stated that he "would be much more comfortable if there were some immediate issues with regard to the arm and neck." He added that it would be unlikely for a degenerative condition to become inflamed absent some external force." Lorenz did not find claimant's physical examination particularly revealing, as claimant's condition was inflammatory and inflammation can change based on various factors (*i.e.*, has the patient taken ibuprofen recently). Lorenz thought claimant could probably perform sedentary work. Lorenz explained that there were likely multiple underlying injuries that contributed to claimant's condition of ill being and, when resolving problems with claimant's arm failed to fully alleviate his pain, it was appropriate to look for additional causes, such as his neck.

¶ 11 Claimant's arm pain, Lorenz explained on redirect-examination, probably came from problems with his shoulder, to a degree, and from a nerve or disc, to a degree. On recross-examination, Lorenz stated that where there is a true shoulder pathology, "you typically have a delay in diagnosis because everybody pays attention to the obvious, which is a rotator cuff tear or some issue in regards to the shoulder."

¶ 12 Dr. Avi Bernstein also testified via evidence deposition. He is an board-certified orthopedic surgeon. Bernstein examined claimant on December 12, 2011. He prepared a report documenting his findings. Claimant told Bernstein he fell on cement, causing a left shoulder injury and neck pain. Bernstein performed a physical examination and noted that claimant appeared healthy. He noted a slightly decreased range of motion in claimant's "cervical spine toward the left side." Claimant could not raise his shoulder beyond 90 degrees. His neurological examination was normal. Bernstein reviewed claimant's discogram. He observed some "contrast material adjacent to the spine," which suggested "that the injections might not have been properly placed." Claimant's MRI showed age-appropriate, minor degenerative changes.

There was no indication of an acute injury. Bernstein observed no injury that correlated with claimant's subjective complaints. He opined that the recommended surgery was not appropriate based on the MRI and discogram. Bernstein stated it was "hard for [him] to relate any neck findings to the work-related incident" because claimant did not complain of neck pain until months after the accident.

¶ 13 On cross-examination, Bernstein acknowledged that his concerns about the results of the discogram causing concordant pain at C5-C6 and C6-C7 was that there is a subjective component to a discogram, that is, the patient self reports pain when the various levels are injected. However, he conceded that the doctor performing the discogram was competent and that patients are not cued as to which disc the doctor is working on. Bernstein agreed that claimant's fall *could have* jarred his cervical spine. While an injury to the brachial plexus would cause numbness in claimant's arm, this was ruled out by an EMG/NCV study that was performed. Thus, claimant's reported numbness documented in his initial visit to Dreyer was consistent with an injury at the C5-C6 or C6-C7 levels. When asked on redirect whether he found it significant that claimant stated he did not strike his head during his initial visit to Dreyer, Bernstein stated, "I don't know that that means that much to me." Claimant's medical records were also submitted into evidence.

¶ 14 The arbitrator determined that claimant's condition of ill being was causally related to his at-work accident of December 26, 2009. He first noted that it was undisputed that claimant sustained an injury to his arm during this accident. The arbitrator observed that treatment initially focused on claimant's left shoulder and arm, but it "largely failed to resolve" his problems. He added, "Testing of the arm revealed no obvious source of [claimant's] disability in the upper extremity." An arthrogram showed partial tear of the supraspinatus, but this was not

serious enough to warrant surgery or explain why claimant could not raise his arm over his head. An EMG/NCV performed April 22, 2010, showed no neurological problems in the arm. These findings pointed toward claimant's neck as a source of his problems.

¶ 15 A physical therapist documented cervical findings in her January 8, 2010, initial evaluation. Claimant saw his own arm specialist, Dr. Chudik, on April 28, 2010, who noted a possible cervical component to claimant's pain. Doctors at Dreyer "worked up the arm without success and explicitly noted in the records that they were not sure the arm was the only source of the problem." The arbitrator noted Lorenz's testimony that cases like this with components in both the neck and shoulder are difficult to diagnose. The arbitrator then summarized his findings regarding causation as follows:

"In summary, the upper extremity testing, the limited success with treatment directed at the arm, the inability of the initial physicians to explain the symptoms on the basis of an arm injury, and Dr. Lorenz's eventual workup of the cervical spine as the result of the problems all point to the cervical spine as a source of [claimant's] ongoing disability."

The arbitrator also noted that Bernstein agreed that the discogram indicated that "the cervical levels were pain generators." Further, Bernstein agreed that claimant's fall could have resulted in jarring claimant's cervical spine and that "numbness down the entire arm could be consistent with injury to the C5-6 and C6-7 levels." Moreover, Bernstein had no alternative explanation for claimant's numbness.

¶ 16 The Commission, with one commissioner dissenting, reversed the arbitrator. It stated that it found Bernstein persuasive, that the medical records undermine claimant's testimony that he sustained a cervical injury at the time of his fall, and that Lorenz's opinions were suspect to

the extent they relied on claimant's self-reported history of injury and symptoms rather than his initial treating records. The Commission noted that though claimant testified that he had neck pain from the onset, his medical records at Dryer indicate otherwise. The office note from claimant's first visit with Christopherson states claimant's was complaining of pain in his left shoulder and bicep. A physical examination of claimant's neck was negative. A Spurling test was normal and cervical range of motion was good. On January 5, 2010, he again saw Christopherson and reported pain in his left shoulder. A "neck examination was against noted as supple, symmetrical without fullness, and [claimant] was diagnosed with a contusion of the left shoulder." No reference is made to cervical symptoms. A January 26, 2010, visit to Christopherson involved similar complaints and findings. Regarding Bernstein's credibility, the Commission found that he had reviewed the records of claimant's initial treatment. The MRI, according to Bernstein, showed only minor, age-appropriate degenerative changes. Relying on Bernstein, the Commission found that claimant had not carried his burden of proving the condition of his neck was related to his at-work accident.

¶ 17 One commissioner dissented, finding the opinion of the arbitrator persuasive. He criticized the majority for relying "on a few isolated facts to negate causal connection." The arbitrator, on the other hand, relied on the opinions of claimant's treating physicians as well as the results of the MRI and EMG/NCV. The dissenting commissioner believed that claimant's condition of ill-being was causally related to claimant's accident.

¶ 18 The circuit court of Kane County confirmed the majority decision of the Commission, and this appeal followed.

¶ 19

### III. ANALYSIS

¶ 20 The main issue on appeal concerns whether claimant's cervical injury is causally related to his at-work accident of December 26, 2009 (claimant also raises two issues that are derivative of this issue based on the Commission denying certain TTD and medical expenses due to a lack of causation). Causation presents a question of fact and is an issue primarily for the Commission to resolve. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984). As such, we will reverse only if the Commission's decision is against the manifest weight of the evidence, that is, if an opposite conclusion is clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992). It is the role of the Commission to evaluate the credibility of witnesses, weigh and resolve conflicts in the record, and draw reasonable inferences from the evidence. *City of Chicago v. Illinois Workers' Compensation Commission*, 373 Ill. App. 3d 1080, 1093 (2007). Though we owe considerable deference to the Commission on factual matters and hesitate to disturb such decisions, it is nevertheless our duty to do so when the Commission's decision is contrary to the manifest weight of the evidence. *Kawa v. Illinois Workers' Compensation Commission*, 2013 IL App (1st) 120469WC, ¶ 79.

¶ 21 In this case, an opposite conclusion to the Commission's is clearly apparent regarding the causal relationship between claimant's condition of ill-being and his at-work accident. On causation, we find the opinions of the arbitrator and the dissenting commissioner to be well-grounded in the record. It is undisputed that claimant sustained an accident at work when he fell on December 26, 2009. Dispositive here is whether that accident resulted only to an injury to claimant's arm, or whether it also injured his cervical spine.

¶ 22 After the fall, claimant experienced immediate numbness through his arm. It is true that claimant's initial medical treatment focused on his arm; however, it is also true, as the arbitrator observed, that this treatment failed to resolve claimant's problems. This provides strong



evidence that claimant's condition was not limited to his arm. Objective testing revealed no condition of the arm that would prevent claimant from raising his arm above his head. As claimant could not do so, this suggests an injury beyond the arm as well. Three months after the accident, claimant's medical records reveal that he was complaining of similar issues and the source of his pain had not been identified despite his doctors' focus on the arm. On April 28, 2010, Dr. Chudik identified what he thought might be a cervical component to claimant's pain. It is true that until Dr. Lorenz examined claimant, no clear sign of cervical injury was identified. It is also true that prior to this time, the focus of treatment was claimant's arm. Lorenz explained in his deposition why the cervical component was difficult to identify, and he opined claimant's cervical condition was caused by his fall at work.

¶ 23 Moreover, we note that the Commission relied heavily on the opinion of Dr. Bernstein. However, Bernstein conceded that claimant's fall would be an adequate mechanism of injury to cause claimant's cervical injury. He further agreed that then numbness down the arm experienced by claimant would be consistent with the sort of cervical injury claimant had. Though he speculated that a brachial plexus injury could cause similar symptoms, he acknowledged that such an injury had never been diagnoses. Finally, though he claimed claimant's arm numbness did not have a cervical source, he could identify no alternative explanation for it. Bernstein's opinion was problematic, and the Commission decision to credit it over Lorenz's testimony is against the manifest weight of the evidence. We also find the Commission's attempt to discredit Lorenz for relying on claimant's self-reported history unpersuasive (the Commission found claimant to lack credibility). Lorenz persuasively explained other aspects of claimant's medical treatment (such as the failure of treatment focused

on the arm to resolve or identify claimant's problems) while Bernstein blatantly speculated about possible causes such as an undiagnosed brachial plexus injury.

¶ 24 In short, given the objective testing of claimant's arm, the failure of treatments directed at claimant's arm to resolve his problems or identify the source of his pain, and Lorenz's persuasive opinion, and the deficiencies in Bernstein's opinion, an opposite conclusion to the Commission's that claimant's cervical condition is unrelated to his at-work accident is clearly apparent.

¶ 25

#### IV. CONCLUSION

¶ 26 In light of the foregoing, the judgment of the circuit court of Kane County confirming the decision of the Commission is reversed. Regarding the additional issues raised by claimant concerning the denial of TTD and medical expenses (both incurred and prospective) based on a lack of causation, we note that causation was the sole basis upon which the Commission vacated the arbitrator's awards on these claims. As the Commission's decision on causation is contrary to the manifest weight of the evidence, we reverse it as well and reinstate the arbitrator's awards on TTD, incurred medical expenses, and prospective medical expenses. We remand this cause for further proceedings, if any, in accordance with *Thomas v. Industrial Comm'n*, 78 Ill. 2d 277 (1980).

¶ 27 Circuit court judgment reversed, Commission decision reversed, and arbitrator's decision reinstated; cause remanded.