2016 IL App (3d) 150722WC-U
No. 3-15-0722WC
Order filed November 9, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

ELIZABETH RAY,	)	Appeal from the Circuit Court
	)	of Peoria County
Appellant,	)	
	)	
v.	)	No. 15-MR-213
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al.*,	)	Honorable
	)	James Mack,
(Apostolic Christian Skylines, Appellee).	)	Judge, Presiding.

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 decision regarding causation was against the manifest weight of the evidence where a purported intervening accident that allegedly broke the chain of causation between claimant's at-work accident and her condition of ill being did not change claimant's condition of ill being that clearly predated that accident.

¶ 2 I. INTRODUCTION

¶ 3 Claimant, Elizabeth Ray, appeals an order of the circuit court of Peoria County confirming a decision (with one Commissioner dissenting) of the Illinois Workers'

Compensation Commission (Commission) that reversed a decision of the arbitrator awarding benefits to claimant pursuant to the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2012)). For the reasons that follow, we reverse.

¶ 4 II. BACKGROUND

¶ 5 It is undisputed that, on April 16, 2012, claimant suffered a work-related accident while in the employ of respondent, Apostolic Christian Skylines. Respondent operates a nursing home, where claimant was employed as a certified nursing assistant (CNA). On that date, claimant tripped on a floor mat and fell. She noted pain in her neck, right shoulder, and back. Respondent directed her to go seek medical treatment at the Illinois Work Injury Resource Center (IWIRC). Medical records from IWIRC show that claimant was complaining of pain in her right shoulder, neck, and right lower back. Claimant was prescribed medication and placed on light duty. She returned to IWIRC the next day, complaining of increased pain in her neck and shoulder.

¶ 6 On April 24, 2012, claimant sought care from Dr. Richard Kube. Medical records state claimant was complaining of pain in her "shoulder, neck, and low mid back." An X-ray ordered by Kube revealed few degenerative changes in claimant's cervical spine. Kube ordered physical therapy. On July 10, 2012, Kube allowed claimant to return to full duty, but scheduled a follow up appointment in one month. A progress note states, "She is doing well at this time." It also states that if claimant tolerated full-duty employment, she could be released from care, and if she had a relapse, she would be reevaluated. On July 31, 2012, Kube placed claimant on "moderate duty." He diagnosed "cervicalgia, lumbago." Kube ordered a diagnostic steroid injection of the SI joint (sacroiliac joint). Kube's records state that claimant had "taken up a side babysitting job" and that babysitting had caused a flare up of her back condition. The SI-joint injection was

performed on August 6, 2012. Claimant's pain initially subsided, but later returned at a higher level.

¶ 7 On August 15, 2012, claimant was examined by Dr. Morris Soriano on respondent's behalf. Soriano testified via evidence deposition. He reviewed claimant's medical records and conducted a physical examination. Soriano diagnosed a cervical strain and soft-tissue injury resulting from claimant's April 16, 2012, accident. The problems with her SI joint were not related to the accident. By the time claimant had started babysitting in the summer of 2012, she had reached maximum medical improvement (MMI) and had returned to full-duty employment. He added, "ongoing complaints are related to some other issue rather than the April, 2012, injury."

¶ 8 Dr. Frank Phillips performed a review of claimant's medical records. He is board certified in orthopedic surgery. Phillips opined that claimant's at-work accident resulted in a cervical and lumbar strain. He noted that claimant returned to full-duty employment on July 20, 2012. He opined that claimant's SI-joint problems were unrelated to the April 2012 accident, as "she really has no SI-specific pain complaints in the period following the initial April injury, [and] none of her treating physicians [made] that diagnosis." It was not until claimant began babysitting that she experienced pain in the SI joint.

¶ 9 Dr. Kube also testified via evidence deposition. He is board certified in orthopedic and spine surgery. He was one of claimant's treating physicians. Kube testified that claimant presented on April 24, 2012, indicating that she was injured while "transferring a patient." She reported feeling pain in her right shoulder, neck, mid and low back, and legs. She stated that she had been seen at IWIRC. He initially focused on claimant's upper back, neck and shoulder,

"leaving the back for a *** different time." Kube diagnosed severe radiculopathy and possibly a strain of claimant's neck and upper back. He ordered physical therapy.

¶ 10 Kube examined claimant on May 8 2012. He noted that she "had made some nice progress with respect to range of motion." On May 22, 2012, claimant was in less pain, but if she increased her activities, her pain increased as well. He ordered an MRI and modified claimant's activity restrictions to sedentary (from light). The MRI was performed on June 1, 2012. It revealed "very little degeneration" and "good fluid signals." He ordered more aggressive rehabilitation.

¶ 11 Kube saw claimant on July 31, 2012. She reported that "she had a little bit of a setback." She was trying to return to full duty, but IWIRC would not release her. Her back pain would "flare up" with "any kind of activities." Kube began to focus on claimant's lower back, and he noted SI joint pain. When claimant would increase her activity level, her back pain would "flare up." Kube could point to nothing that would indicate that claimant's back pain had ceased between April 24, 2012 (the date of the accident), and July 31, 2012. Kube recommended a diagnostic SI joint injection, which was performed on August 6, 2012. Kube saw claimant the next day, and she reported initial relief, but that pain came back toward the end of the day. Kube believed this was the result of the anesthetic, and "hoped" the steroid would "kick in." He kept claimant on moderate duty. Kube ordered further physical therapy focusing on the SI joint.

¶ 12 Kube saw claimant on September 18, 2012, and October 18, 2012. Her pain level was increasing as of the latter visit. Kube ordered an additional SI joint injection. He again saw claimant on November 6, 2012, after the second injection had been performed. She experienced initial relief, but it did not last. At this time, Kube "felt that if her pain control was inadequate

then she might be looking at surgical intervention to fuse the joint." Claimant continued to receive physical therapy at this point.

¶ 13 On December 4, 2012, claimant followed up with Kube. Claimant reported numbness and tingling in "associated with her extremity." This would indicate that claimant's problem might not be with her lumbar spine; however, Kube remained "relatively convinced" that claimant's problem was with her SI joint. He ordered an MRI to ensure nothing "was being overlooked." The MRI, which was performed on December 10, 2012, was "pretty normal." Kube concluded that claimant's SI joint was inflamed and irritating her sciatic nerve. On January 5, 2013, Kube examined claimant. He recommended a "minimally invasive SI joint fusion." Kube opined that an SI joint fusion was a reasonable and necessary treatment for claimant's condition. He further opined that both claimant's cervical condition and her lower back and SI joint condition were causally related to her at-work accident of April 16, 2012.

¶ 14 On cross-examination, Kube testified that he had no opinion as to whether claimant's injury resulted from repetitive trauma. He acknowledged that his opinions were based on the information claimant provided him. At the time of the June 1, 2012, MRI, Kube believed claimant's cervical condition was primarily a soft-tissue injury. At this stage of claimant's treatment, Kube was focusing on claimant's neck. On July 20, 2012, Kube released claimant to full-duty employment. Claimant told Kube that after he released her to full duty, IWIRC refused to do the same, and claimant "did some babysitting on the side." Claimant experienced a "flare up" of her back while babysitting. Kube's records state that claimant was lifting children weighing between 30 and 50 pounds, which, Kube agreed, could "aggravate her condition of ill – being and hurt her low back." This could be responsible for the increased complaints claimant made during her August 31, 2012, visit with Kube.

¶ 15 Kube responded affirmatively to a hypothetical question asking him whether a fall that resulted in a trip by ambulance to the hospital in late November 2012 at which time she reported increased complaints to her low back and sacral area was the sort of incident that could aggravate the condition of claimant's back. Kube stated that it was possible that "the treatment [he] rendered after that time could be related to that intervening fall."

¶ 16 On redirect-examination, Kube stated that claimant's injury on April 16, 2012, could have "made her more susceptible to experiencing pain from normal daily activities."

¶ 17 During recross examination, Kube reviewed records from claimant's physical therapy. Records from December 3, 2012, mention a fall occurring that resulted in claimant going to the emergency room. They further state that claimant left against medical advice. Kube agreed that claimant's symptoms appear to have increased at that time. On further redirect examination, Kube opined that her SI joint problems were nevertheless related to the April 16, 2012, accident. He pointed out that they had been "dealing with [claimant's] right SI joint for months prior to that."

¶ 18 Claimant also testified at the arbitration hearing. At the time of the hearing, she was 45-years old. At the time of her injury, she had been working for respondent for a year, assisting residents in their activities of daily living. On April 16, 2012, claimant was escorting a resident to the dining room. After seating the resident, she turned around and tripped over a mat on the floor. She immediately felt pain in her neck, shoulder, wrist, and back, but not her pelvic region initially. In 2009, she suffered a work related injury and was treated at IWIRC. She was given a full-duty release in March 2009, and she required no further medical treatment for that injury. She characterized IWIRC as the "company doctor." She went to IWIRC following her April 16, 2012, injury. As IWIRC was not providing any active medical care or making any referrals to

specialists, claimant sought treatment from her personal physician, Dr. Shotic. Shotic referred her to Kube.

¶ 19 She first saw Kube on April 24, 2012. Kube took claimant off work. Her primary complaints concerned her cervical spine. However, she also complained of low-back pain and pelvis.

¶ 20 Claimant testified that she was never employed as a babysitter, but she did sometimes babysit her grandchild. She denied being injured as a result of babysitting. She never sought medical care as a result of babysitting-related activities.

¶ 21 In June 2012, claimant's neck symptoms began to subside as a result of the physical therapy she received. Her lower-back pain and pelvic pain persisted. Claimant indicated that she was having pain in her middle "right buttock region," near the right side of her tailbone. Kube prescribed an SI joint injection on August 6, 2012.

¶ 22 On November 6, 2012, Kube and claimant first discussed surgery. Kube ordered an MRI of claimant's lower back. Claimant admitted that, during the first week of December 2012 (records show this actually occurred on November 30), she was going down the stairs and fell. She explained that she stumbled and skinned her knees. She denied going to the doctor as a result of this fall or being transported by ambulance anywhere. She did not experience an increase in symptomatology with respect to her back, pelvis, or SI joint. Claimant further testified that on June 19, 2012, she sought medical care for a kidney stone.

¶ 23 On cross-examination, claimant agreed that she had no pelvic pain immediately following the accident. Claimant acknowledged babysitting in June and July of 2012, but explained that this was with older grandchildren that did not need attention like a baby would. She testified that to the extent that Kube's records stated she had taken up babysitting job that resulted in an

exacerbation of her back condition, they were inaccurate. Claimant agreed that in November 2012, Kube did not recommend surgery. Claimant stated that when she fell on April 16, 2012, she landed on her side and not her lower back. Following the accident, claimant's level of lower-back pain was low, which she believed was due to the medicines she was taking. Initially, there were no discussions between Kube and claimant regarding her SI joint. Claimant was released to full duty in early July of 2012. Claimant testified that SI joint surgery had been mentioned as early as August 2012. Claimant denied that the fall she experienced on November 30 caused an increase in SI joint pain.

¶ 24 Respondent called Matthew Feucht. He works as an administrator for respondent and has been involved in petitioner's case. Respondent does not offer light duty when an individual's condition is not work related. Petitioner is still an employee and has never been terminated.

¶ 25 The arbitrator noted that it was undisputed that claimant sustained a work-related injury on April 16, 2012. She noted pain in her neck, right shoulder, right wrist, and back. She was directed to IWIRC, where she gave a consistent account of her complaints. On April 24, 2012, she commenced a course of treatment with Kube. On July 10, 2012, Kube released claimant to full duty, but directed her to follow up in one month. On July 31, 2012, claimant reported back problems to Kube, which had "flared up" after initially subsiding. The arbitrator found claimant to be a credible witness. He found claimant was not injured when she was babysitting her granddaughter. Any increase in back pain would have been consistent with the pattern of pain flowing from her at-work accident. The arbitrator also credited petitioner's account of the November 30 fall as not causing an exacerbation of her condition. He also found Kube credible. Based on the testimony of Kube and claimant, the arbitrator found that claimant had carried her burden of proving the condition of her SI joint was work related.

¶ 26 The Commission modified the arbitrator's finding regarding causation. It found claimant's testimony to be "less than credible with regard to her November 30, 2012 injury at home, the mechanics of her fall, the injuries from her fall, and the treatment she sought following her fall." Therefore, it vacated the arbitrator's award of benefits beyond November 30, 2012. The Commission cited Kube's medical records from November 30, 2012, which it found contradicted claimant's testimony with regard to that fall. Moreover, claimant denied going to the emergency room (ER); however, records from the Methodist Medical Center ER state that claimant arrived at 1:49 p.m., gave a history of her medications and problems, and left at 2:31 without seeing a medical provider (she also signed a "form and verbalized an understanding of the consequences"). A physical therapy note also mentions the ER visit, and she stated that she was experiencing increased pain while doing physical therapy due to the fall. The Commission noted that outside of the physical therapy note, Kube reviewed no records pertaining to claimant's November 30, 2012, fall and that as of early November 2012, Kube still thought claimant might be able to avoid surgery. As such, the Commission found the November 30 fall to be an intervening cause that broke the chain of causation between claimant's April 16, 2012, accident and the condition of her SI joint. It then summarized its decision:

> "The evidence shows that: (1) [claimant's] fall while stepping off the last step of her stairs at home [on November 30, 2012], landing on her right side, changed the nature of her injury, as she reported new and more extensive pain; (2) her treating physician documented and admitted that her symptomatology changed after that fall at home; and (3) her new symptoms required more extensive testing and treatment, including an MRI of the lumbar spine, and a SI joint fusion surgery recommendation"

One Commissioner dissented, emphasizing that claimant had never been fully released from care and that claimant was receiving treatment to her SI joint prior to the November 30, 2012 accident. The circuit court of Peoria County affirmed the majority, and this appeal followed.

¶ 27 III. ANALYSIS

¶ 28 The sole issue presented in this appeal is whether the Commission's decision regarding an intervening cause is contrary to the manifest weight of the evidence. Generally, a claimant has the burden of proving a causal relationship between his or her condition of ill-being and a work-related accident. *Weekley v. Industrial Comm'n*, 245 Ill. App. 3d 863, 868 (1993). Where an intervening cause breaks the chain of causation, any subsequent consequence flowing from the intervening cause is not compensable under the Act. *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 786 (2005). Causation presents a question of fact subject to review using the manifest-weight standard. *Id*. Accordingly, we will disturb the judgment of the Commission only if an opposite conclusion is clearly apparent. *Beattie v. Industrial Comm'n*, 276 Ill. App. 3d 446, 449 (1995). A claimant bears the burden of proving each and every element of his or her claim. *Courier v. Industrial Comm'n*, 282 Ill. App. 3d 1, 5 (1996). Judging credibility, weighing evidence, drawing inferences, and resolving conflicts in the record are all primarily matters for the Commission. *Mendota Township High School v. Industrial Comm'n*, 243 Ill. App. 3d 834, 836 (1993). While 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 an opposite conclusion to the Commission's is clearly apparent. *Kawa v. Illinois Workers' Compensation Commission*, 2013 IL App (1st) 120469WC, ¶ 79.

¶ 29 We have previously stated, "Every natural consequence that flows from an injury that arose out of and in the course of the claimant's employment is compensable unless caused by an

independent intervening accident that breaks the chain of causation between a work-related injury and an ensuing disability or injury." *Vogel*, 354 Ill. App. 3d at 786. Because employment need only be *a* causative factor in an claimant's injury (*Teska v. Industrial Comm'n*, 266 Ill. App. 3d 740, 742 (1994)), for an intervening cause to limit an employer's liability under the Act, it must *completely* break the chain of causation (*Global Products v. Illinois Workers' Compensation Commission*, 392 Ill. App. 3d 408, 411 (2009)).

¶ 30 In this case, it is apparent that the Commission applied the incorrect legal standard in assessing claimant's claim. In finding that claimant's November 30 fall broke the chain of causation between her at-work accident and her condition of ill being, it relied on its findings that the nature of claimant's injury changed; that claimant reported "new and more extensive pain; that Kube agreed her symptomatology changed; and that she required "more extensive testing and treatment." None of these considerations show a break in the causal chain—that claimant's condition worsened is not enough for respondent to avoid liability. *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 786 (2005) ("That other incidents, whether work-related or not, may have aggravated the claimant's condition is irrelevant."). The proper question was not whether the nature of or treatment for claimant's condition changed, it was whether claimant's condition subsequent to the November 30 fall was *completely unrelated* to her at-work accident.

¶ 31 Indeed, for the causal chain to have been broken, the Commission would have had to find that claimant's condition as it related to her work-related accident had completely resolved sometime in November and that her subsequent condition of ill being was completely new and flowed from the November 30 fall, which coincidentally injured precisely the same body part. It could have also found that claimant suffered from two distinct and unrelated conditions in the

very same body part. Neither scenario is plausible given the state of the record. Quite simply, claimant was receiving SI joint treatment prior to her November 30 fall. Moreover, the surgery that was ultimately prescribed was contemplated when Kube met with claimant on November 6, 2012. It defies credulity to maintain that claimant's condition, which was well documented prior to November 30 was completely unrelated to her condition after November 30 where, during both periods, the same body part was at issue and the same treatment contemplated. In short, an opposite conclusion to the Commission's is clearly apparent. We therefore hold that the Commission's decision regarding causation is contrary to the manifest weight of the evidence.

¶ 32 IV. CONCLUSION

¶ 33 In light of the foregoing, the decision of the circuit court of Peoria County confirming the decision of the Commission is reversed. We remand this cause to the Commission in accordance with *Thomas v. Industrial Comm'n*, 78 Ill. 2d 277 (1980).

¶ 34 Reversed and remanded.