

Workers' Compensation
Commission Division
Order Filed: September 26, 2016

No. 3-15-0766WC

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

CHARLES STEVENS,)	Appeal from the
)	Circuit Court of
Appellant,)	Peoria County
)	
v.)	No. 15 MR 309
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, <i>et al.</i> ,)	Honorable
)	James Mack,
(RG Construction Co., Appellee).)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* We affirmed the judgment of the circuit court which confirmed a decision of the Illinois Workers' Compensation Commission (Commission), denying the claimant benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2012)).

¶ 2 The claimant, Charles Stevens, appeals from a judgment of the circuit court of Peoria County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission), denying him benefits pursuant to the the Workers Compensation Act (Act) (820

ILCS 305/1 *et seq.* (West 2012)) for injuries which he allegedly sustained while in the employ of RG Construction. For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on July 18, 2014.

¶ 4 The claimant, who was 49 years old at the time of arbitration, testified that he worked as a drywall carpenter since 2003. He testified that he first experienced right elbow problems on September 16, 2010, while working for Morrissey Construction Company (Morrissey), a prior employer. According to the claimant, he was assigned to make sure that the screws used to hang drywall were sunk at the proper depth. He stated that each drywall sheet had 50 screws and he used a power-drill to sink an estimated 20,000 to 25,000 screws that day. The claimant stated that, when he woke up the next morning, his right elbow was in pain and he could not fully extend his arm. He called and informed his supervisor about his injury, and was told, "don't bother coming back [to work]."

¶ 5 On September 21, 2010, the claimant saw Dr. Clark at Pekin Orthopedic Center, complaining of pain in his right elbow. According to Dr. Clark's medical records, x-rays of the claimant's right elbow revealed moderate degenerative joint disease. The doctor recommended conservative treatment and prescribed a Flector patch for pain. Although there is no indication that Dr. Clark took the claimant off work, the claimant testified that he did not do any carpentry work until April 2012.

¶ 6 During his time off work, the claimant sought treatment from his primary care doctor, Dr. Ziad Musaitif, for general body pain and pain in his right elbow and shoulder. In a treatment note dated November 1, 2011, Dr. Musaitif diagnosed the claimant with a shoulder sprain and unspecified joint disorder, and prescribed medication for pain. Dr. Musaitif's records also note

that the claimant has osteoarthritis. The claimant testified that he followed-up with Dr. Musaitif every couple of months to get a refill of pain medication.

¶ 7 In April 2012, the claimant returned to work as a carpenter for RG Construction where he performed his usual drywall duties at a senior care development project. A written job description states that the position required the continuous use of "hand tools," the ability to work on ladders and platforms, and the ability to lift and carry various objects, including doors and wallboard which weigh up to 130 pounds. The position also involved frequent above-the-shoulder lifting; however most of the heavy lifting is below-the-shoulder and is done "with assistance" of another carpenter. Although carpenters work in teams of two, the written job description acknowledges that carpenters do much of the lifting alone. The written job description states that carpenters framing drywall are expected to frame 200 feet of drywall per day, while carpenters hanging drywall are expected to hang 40 sheets of drywall per day. In addition to the written job description, the record contains a videotape purporting to show various work activities performed by carpenters at the senior care development project.

¶ 8 On April 22, 2012, shortly after returning to work for RG Construction, the claimant saw Dr. Musaitif complaining of pain in his right arm. The claimant told Dr. Musaitif that he returned to work as a "drywaller" and the heavy lifting was causing him to have "severe back and arm pain." The claimant was given a refill of Vicodin and Valium, which allowed him to work without pain.

¶ 9 The claimant testified that, on August 13, 2012, the pain in his right shoulder substantially increased and reached "the point where [he] had to get it looked at." The claimant stated that, when he informed his supervisor that he needed to take off work to see a doctor, the supervisor told him to "take [his] tools with [him]," which the claimant interpreted to mean that

he was terminated. The record reveals that the claimant did not return to work for RG Construction.

¶ 10 On August 15, 2012, the claimant returned to Dr. Musaitif complaining of increased pain in his right arm. Dr. Musaitif noted that the claimant's right arm condition is a "[c]hronic problem" which started two years ago with "[n]o known trauma." He refilled the claimant's pain medication and referred him to Great Plains Orthopaedics for evaluation.

¶ 11 On August 21, 2012, the claimant was seen by Dr. Ryan T. Robinson at Great Plains Orthopaedics. On that date, the claimant filled out a medical history form in which he indicated that he had been suffering right elbow and shoulder symptoms for the past two years. Although the claimant did not check "yes" or "no" when asked whether his injury was work-related, he stated that he injured his right arm because he is "always using screw guns." Dr. Robinson wrote in the history section of his notes that the claimant has not been able to straighten his elbow since he injured it while on the job in September 2010. Although the claimant took a year off work, he continued to experience intermittent elbow pain, which is "off and on." The claimant told Dr. Robinson that since returning to work, he has increased pain and difficulty fully extending his elbow. The claimant also reported shoulder pain when reaching overhead which he believes is a result of him compensating for his elbow. The claimant informed the doctor that he has had no acute injury at the shoulder.

¶ 12 After examining the claimant, Dr. Robinson ordered x-rays of the claimant's right elbow and shoulder, which were taken that same day. According to Dr. Robinson's report, the right elbow x-ray revealed moderate to severe degenerative changes in the radiocapitellar joint, bony spurring anteriorly, and a possible loose body. X-rays of the claimant's right shoulder showed acromioclavicular (AC) joint osteoarthritis, type 1 acromion, and possible cystic changes at the

greater tuberosity. Dr. Robinson diagnosed the claimant with: (1) right elbow pain with moderate to severe osteoarthritis; and (2) right shoulder pain with suspected rotator cuff tendinitis/pathology. Dr. Robinson wrote in his notes that he "strongly" suspects that the claimant's elbow pain and loss of extension are "due to some significant degenerative changes." He also believed that the claimant's shoulder pain "could be secondary to compensation for his elbow," but is most likely "rotator cuff tendinitis." Dr. Robinson told the claimant to consider a "subacromial injection" and advised him to follow-up with Dr. Jeffrey R. Garst as needed. Dr. Robinson did not impose any work restrictions.

¶ 13 On August 28, 2012, the claimant was seen by Dr. Garst, an orthopedic surgeon, at Great Plains Orthopaedics. On that date, the claimant filled out a medical history form in which he indicated that he works as a carpenter and has been using a drill for 10 years to frame and hang drywall. The claimant stated that the "repetition has finally taken [a] toll" and he cannot completely straighten or bend his elbow. Dr. Garst examined the claimant, reviewed the x-rays, ordered MRIs of the claimant's right arm, and took the claimant off work.

¶ 14 The claimant underwent an MRI of his right shoulder on August 31, 2012. The radiologist's report states that the scan revealed: a partial thickness rotator cuff tear with chronic rotator cuff tendinosis; arthritic changes in the glenohumeral joint; and bone spurring and arthritis at the AC joint. The MRI scans of the claimant's his right elbow disclosed osteoarthritis with loose bodies in the medial aspect ulnohumeral joint posteriorly.

¶ 15 The claimant followed-up with Dr. Garst on September 10, 2012. The doctor reviewed the MRI scans and recommended arthroscopic surgery. On September 21, 2012, Dr. Garst operated on the claimant's right arm, performing right elbow arthroscopy with removal of loose bodies and right shoulder arthroscopy with acromioplasty, distal clavicle excision, and rotator

cuff repair. In his operative report, Dr. Garst noted that he found "quite a bit" of arthritis in the elbow, arthritic changes in the right shoulder, and a small full thickness rotator cuff tear at the supraspinatus insertion site. In addition, the doctor performed a debridement and tenotomy on the long head of the biceps tendon which was torn two-thirds of the way through.

¶ 16 In his deposition, Dr. Garst opined that the claimant's arthritis could have been aggravated by the claimant's work activities at RG Construction. He based his causation opinion on the following hypothetical presented by the claimant's attorney:

"please assume that [the claimant] was unable to move—or after [the claimant] was unable to move his elbow, he stopped working until approximately February of 2012 when he returned to carpentry. This time he was working for RG Construction. [The claimant's] job involved installing the commercial framing. This involved two tasks. The first task required [the claimant] to hand pieces of 18-foot steel, two pieces at a time, to another carpenter positioned 12 to 18 feet up in the air. This would be an overhead movement that would require lifting approximately 30 pounds. He would do this about 200 times a day. He would also have to use a piece of flattened conduit to scrape out hardened fireproofing that was in a track for the framing overhead. This would be a completely overhead motion ***. In addition, he would also have to hang sheetrock. These sheets would weigh somewhere around 100 pounds and measure 4 by 12 [feet]. He would have to install about 25 sheets a day, screwing in about 50 screws per sheet. This would also involve use of that drywall gun which would jerk and twist the arm. And this would also involve overhead motion.

Doctor, do you have an opinion as to whether this type of work that he did over a year might or could have contributed to the conditions of ill-being that you have diagnosed in [the claimant]?"

In response to the hypothetical, Dr. Garst stated that the work at RG Construction did not cause "all of the claimant's problems." He explained that the claimant had preexisting arthritis and a preexisting rotator cuff tear "from the work he did for many years." However, Dr. Garst opined that if the claimant "did that type of work for months *** it may have exacerbated the problem or made it worse."

¶ 17 On cross-examination, Dr. Garst acknowledged that the claimant's right arm symptoms had been present since 2010. He also recognized that the medical records of Dr. Robinson state the claimant "has had no acute injury at the shoulder." The doctor confirmed that the degenerative changes in the claimant's right arm took years to develop.

¶ 18 RG Construction submitted into evidence the deposition testimony of its independent medical examiner, Dr. Prasant Atluri. Dr. Atluri testified that he evaluated the claimant, who reported the onset of right elbow pain in September 2010. The claimant told Dr. Atluri that he returned to work in March 2012 and that his condition worsened and he experienced pain in his upper right extremity, including the shoulder. The claimant denied that a specific event or trauma triggered his pain. The claimant also told Dr. Atluri that he was a carpenter and described his job duties. Additionally, Dr. Atluri received a written job description and videotape for a "rough carpenter," which depicted varying duties that included lifting 130-pound wallboards, 18-pound studs, and using power-drills, ladders and saws. Some of the work required above-the-shoulder lifting.

¶ 19 Dr. Atluri reviewed the claimant's x-rays and MRI scans, which revealed arthritic changes within the glenohumeral and AC joints, a subchondral cyst in the glenoid, evidence of a partial-thickness rotator cuff tear, and arthritic changes throughout the elbow. According to Dr. Atluri, the claimant's arthritis is systemic in nature because it involves multiple joint surfaces and affects the whole body. It is also a degenerative condition that is not related to any traumatic event or activity. Based upon the written job description and videotape, Dr. Atluri opined that the claimant's right arm condition was not caused or aggravated by his work duties, but was due entirely to the natural progression of his underlying systemic arthritis, which is a "genetic issue." In support of his opinion, Dr. Atluri drew a distinction between an activity which causes pain and an activity which aggravates or accelerates a pathological condition. He acknowledged that the activities required for the claimant's job would certainly be painful for someone with an arthritic joint; however, he explained that those activities would not cause or aggravate a degenerative joint condition.

¶ 20 Roy Eash testified at the arbitration hearing that he worked with the claimant on various projects at RG Construction, though he did not work at the senior care development project. Eash testified about his job duties and explained that carpenters at RG Construction were either "framers," "hangers" or "ceiling guys." He explained that "framing" is done with metal studs, which are 12 feet in length and weigh 10 pounds, and "hanging" involves fastening sheets of drywall, weighing 128 pounds, to the metal studs. When asked about the written job description, Eash clarified that while carpenters work together to lift the 128-pound sheet of drywall onto a cart, they work independently to roll the drywall sheets to the place of installation and install the drywall without the help of another carpenter. He also added that gripping and grasping the drywall "had to be done with strength."

¶ 21 The claimant testified that he reviewed the written job description and videotape offered into evidence by RG Construction and he agreed that it described the general nature of his job. He noted, however, that he spent 75-80% of his time "framing" and 20-25% "hanging" drywall and correcting problems. The claimant denied installing "sheetrock" (a type of drywall), denied working with "4 x 8 x 1/2 materials," and denied working on ceilings. The claimant also testified that the steel studs were 24 feet in length and weighed 20 pounds. The claimant agreed that RG Construction expected two-man teams to frame 200 feet of wall per day, but he noted that the production demand was later changed to 150 feet per day. As to the videotape, the claimant recognized that it depicted carpenters performing five different jobs, including overhead framing and drywall hanging. However, the claimant explained that the video only showed 30 seconds of framing and turned off when the construction workers in the video were framing a "soffit." The video did not show studs being installed, fireproofing being chiseled out, nor did the video depict the chop-sawing of studs or handing the studs to the carpenter working on the elevated platform. The claimant explained that the only work he performed, as depicted in the video, was "the rocking."

¶ 22 The claimant denied having been involved in an accident or sustaining any acute trauma. The claimant testified that he is unable to fully extend his right arm, lives with constant pain, and takes Vicodin on a daily basis.

¶ 23 The claimant had filed two applications for adjustment of claim pursuant to the Act, seeking benefits for the injuries he allegedly sustained on September 16, 2010, while in the employ of Morrissey (case No. 12 WC 38936), and August 15, 2012, while in the employ of RG Construction (case No. 12 WC 31266). The cases were consolidated for a hearing.

¶ 24 Following the consolidated hearing, the arbitrator issued a separate decision for each case. In case No. 12 WC 38936, relating to the claim against Morrissey, the arbitrator denied the claimant benefits, finding that he failed to prove that his right arm condition was causally connected to the work accident of September 16, 2010. The claimant subsequently settled his claim against Morrissey for a lump sum of \$10,000.

¶ 25 In case No. 12 WC 31266, relating to the claim against RG Construction, the arbitrator found that the claimant suffered an accident arising out of and in the course of his employment, and that the condition of ill-being in his right arm resulted from his employment with RG Construction. The arbitrator awarded the claimant a total of 27 2/7 weeks of temporary total disability (TTD) benefits, a weekly wage differential of \$530.13, and medical expenses.

¶ 26 RG Construction filed for a review by the Commission of the arbitrator's decision in case No. 12 WC 31266. On May 4, 2015, the Commission issued a unanimous decision finding that the claimant failed to prove that his injuries arose out of and in the course of his employment with RG Construction. As a consequence, the Commission denied the claimant benefits under the Act.

¶ 27 The claimant sought judicial review of the Commission's decision in the circuit court of Peoria County. On October 15, 2015, the circuit court entered an order confirming the Commission's decision and this appeal followed.

¶ 28 The claimant argues that the Commission's finding that he failed to prove that he sustained an injury that arose out of and in the course of his employment with RG Construction is against the manifest weight of the evidence. He contends that the Commission's reliance on the medical opinion of Dr. Atluri was misplaced because the doctor relied upon a written job description and videotape, which did not accurately portray his job duties and were rebutted by

the testimony of two witnesses. The claimant maintains that the Commission should have relied upon Dr. Garst's opinion that the claimant's right arm condition is causally related to his employment with RG Construction.

¶ 29 To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered an injury that arose out of and in the course of his employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). An injury is considered accidental even though it develops gradually over a period of time as a result of a repetitive trauma, without requiring complete dysfunction, if it is caused by the performance of the claimant's job. *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 529 (1987). In repetitive trauma claims, the claimant carries the burden of proving that the injury was work related and not the result of normal degenerative aging processes. *Edward Hines Precision Components v. Industrial Comm'n*, 356 Ill. App. 3d 186, 194 (2005). Compensation may be awarded for a claimant's condition of ill-being even though the conditions of his employment do not constitute the sole, or even the principal, cause of injury. *Sisbro*, 207 Ill. 2d at 205.

¶ 30 The question of whether a claimant's disability is attributable to a degenerative condition or, because of an accident, to an aggravation of a preexisting condition, is a question of fact to be decided by the Commission (*Sisbro*, 207 Ill. 2d at 204-05), and its resolution of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence (*Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44 (1987)). Moreover, "[t]o the extent that the medical testimony might be construed as conflicting, it is well established that resolution of such conflicts falls within the province of the Commission, and its findings will not be reversed unless contrary to the manifest weight of the evidence." *Sisbro*, 207 Ill. 2d at 206 (quoting *Caterpillar*

Tractor Co. v. Industrial Comm'n, 92 Ill. 2d 30, 37 (1982)). For a finding of fact to be against the manifest weight of the evidence, a conclusion opposite to the one reached by the Commission must be clearly apparent. *Caterpillar Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992).

¶ 31 Applying these standards, we cannot say that the Commission's conclusion that the claimant failed to establish that his right elbow and right shoulder injuries are causally related to his employment with RG Construction is against the manifest weight of the evidence. The Commission specifically found the causation opinion of Dr. Atluri more persuasive than that of Dr. Garst. The Commission noted that Dr. Atluri formulated his causation opinion after examining and interviewing the claimant, reviewing the videotape, and reviewing the claimant's medical records (including the x-ray and MRI scans). Dr. Atluri opined that the activities performed by the claimant in the course of his employment with RG Construction did not involve repetitive, heavy, overhead lifting of the upper extremity which could aggravate or accelerate his preexisting degenerative systemic arthritis. Dr. Atluri noted that the medical records established that the claimant had preexisting degenerative arthritis in his right elbow and a history of elbow and shoulder pain before he began working for RG Construction and that there was no evidence of a traumatic injury. Although Dr. Atluri acknowledged that the claimant experienced pain while performing his job duties due to his preexisting systemic arthritis, he explained that those activities would not cause or aggravate a degenerative joint condition.

¶ 32 While Dr. Garst reached a different conclusion, the resolution of such conflicting medical opinions falls within the province of the Commission. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675 (2009). Here, the Commission found it compelling that Dr. Garst's opinion was based upon a hypothetical which required him to assume

facts about the claimant's work activities that were not borne out by the evidence of record. For example, the claimant's counsel asked Dr. Garst to assume that the claimant was "required to hand pieces of 18-foot steel, two pieces at a time, to another carpenter positioned 12 to 18 feet up in the air" and that "[t]his would be an overhead movement that would require lifting approximately 30 pounds *** about 200 times per day." Neither the claimant's testimony nor any other record evidence establishes that the claimant performed such activities, at least not with the frequency or weights presented in the hypothetical on which Dr. Garst based his opinion. Rather, the claimant testified that the steel studs were 24 feet in length, weighed 20 pounds, were installed one at a time, and that he was expected to frame 150 feet of drywall per day. He did not testify that lifting studs required "an overhead movement" or that he made the movement 200 times per day. In fact, the claimant testified that he alternated between working on the floor, which required the carrying and lifting of studs, and working on scaffolding which did not require carrying or lifting of studs. Given the disparity between the hypothetical posed to Dr. Garst and the actual physical requirements of the claimant's job, the Commission dismissed Dr. Garst's opinion. Accordingly, although Dr. Garst's opinion contradicted Dr. Atluri's opinion, the Commission found Dr. Atluri's opinion more persuasive and resolved the conflicts in the evidence in favor of RG Construction. Based upon the record before us, we are unable to conclude that the Commission's credibility finding and its resultant reliance upon Dr. Atluri's causation opinion is against the manifest weight of the evidence.

¶ 33 The claimant makes much of the fact that the Dr. Atluri's causation opinion was based upon a written job description and videotape provided by RG Construction which were contradicted by the claimant's and Eash's testimony. While it is true that the claimant and Eash disputed some of the information contained the written job description and videotape, the

claimant's and Eash's testimony reveals that the job description and videotape were largely accurate.

¶ 34 In this case, the Commission, after considering the conflicting evidence, determined that the claimant failed to sustain his burden of proving that the injuries to his right arm arose out of and in the course of his employment with RG Construction. Based upon the record before us, we cannot say that an opposite conclusion is clearly apparent.

¶ 35 Having determined that the Commission's finding that the claimant failed to prove that his right arm injury arose out of and in the course of his employment with RG Construction, is not against the manifest weight of the evidence, we need not address his remaining arguments regarding TTD benefits, wage differential, or medical expenses.

¶ 36 For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County which confirmed the Commission's decision denying the claimant benefits pursuant to the Act.

¶ 37 Affirmed.