

No. 5-15-0323WC

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IN THE
APPELLATE COURT OF ILLINOIS
FIFTH DISTRICT

CLINTON TAYLOR,)	Appeal from the
)	Circuit Court of
Appellee,)	Jefferson County.
)	
v.)	No. 14-MR-183
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, <i>et al.</i> ,)	Honorable
)	David K. Frankland,
(Mt. Vernon Police Department, Appellant).)	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 reversed the judgment of the circuit court which reversed a decision of the Illinois Workers' Compensation Commission (Commission) and reinstated the arbitrator's decision awarding the claimant benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2012)), and we reinstated the Commission's decision.

¶ 2 The Mt. Vernon Police Department (Mt. Vernon) appeals from an order of the circuit court of Jefferson County which reversed a decision of the Illinois Workers' Compensation Commission (Commission) denying the claimant, Clinton Taylor, benefits pursuant to the

Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2012)), and reinstated the arbitrator's decision which awarded the claimant benefits. For the reasons which follow, we reverse the judgment of the circuit court and reinstate the decision of the Commission.

¶ 3 The following factual recitation is taken from the evidence adduced at the arbitration hearing held on December 20, 2013.

¶ 4 The claimant testified that, on October 16, 2012, he was working as a police officer for Mt. Vernon. On that date, the claimant responded to a radio dispatch regarding a fight at Mt. Vernon Alternative School. The claimant testified that a 16-year-old student resisted arrest and he had to take the student to the ground and wrestle with him before his partner, Corporal Ryan McKee, arrived to assist in effectuating the arrest. He testified that his knee struck the concrete ground "many times" and he was sore in several places, including his arms and knees.

¶ 5 According to an incident report prepared after the arrest, the claimant noted that he sustained injuries to his left forearm and hand, including red marks, scratches, and a small amount of blood. The report, however, does not reference any injuries to the claimant's right knee. In his testimony, the claimant admitted that he did not immediately report his knee pain to Mt. Vernon. He explained that, during his 14 years' work as a police officer, he has been hurt and sore "many a times," but always recovered. He believed his knee pain was no different and would resolve on its own.

¶ 6 However, in the days following the accident, the claimant testified that he continued to experience soreness in his knees and arms. For example, a few days after the accident, he was at home repairing a seal on his toilet tank when his right knee began to swell and cause pain. He explained that he knelt on the ground, 3 or 4 times, for approximately 10 to 20 seconds, and at no time did he strike his knee on the ground.

¶ 7 On November 16, 2012, the claimant completed Form 45, entitled "Employer's First Report of Injury." The nature of the injury as described by the claimant on Form 45 was that he suffered a "[t]orn patellar [*sic*] tendon in right knee." Although the form is dated November 16, 2012, the bottom of that form states it was received by Mt. Vernon on November 27, 2012.

¶ 8 On November 19, 2012, the claimant saw nurse practitioner Amanda McKee of the Orthopedic Center of Southern Illinois. McKee's notes of that visit state the claimant presented with a chief complaint of right knee pain, "without any injury or trauma." McKee wrote in the history section of her notes that the claimant noticed the pain two weeks ago and he was not sure if it was caused from "wrestling *** with a co-worker" or "doing work on his knees replacing a toilet." Physical examination revealed point tenderness to the patellar tendon insertion site and some effusion. McKee noted that the claimant had a "catching sensation" and was not able to straighten his leg or perform a straight leg raise. McKee recorded a clinical impression of "acute right knee pain, patellar tendinitis versus patellar tendon or quadriceps rupture," and she ordered an MRI of the claimant's right knee.

¶ 9 The claimant underwent an MRI of his right knee later that same day. The radiologist's report states that the scan revealed: a partial tear of the patellar tendon; moderate joint effusion; preexisting patellar tendinosis with mild to moderate tendon thickening; and deep infrapatellar bursitis.

¶ 10 On November 20, 2012, the claimant returned to the Orthopedic Center of Southern Illinois and was seen by Dr. Angela Freehill. In her report of that visit, Dr. Freehill recorded a history of the claimant having injured himself on October 16, 2012, while "wrestling a perpetrator down to the ground." He reported that he did not have immediate pain, but was sore in the anterior right knee. The claimant complained of weakness in his knee and of aching and

intermittent pain. He stated that he has been "limping around" for the past month and that certain activities make his symptoms worse—namely, standing, walking, and extending his leg. He also noted increased pain and swelling near the anterior knee while kneeling to fix the seal on his toilet. The doctor noted that the MRI taken of the claimant's right knee disclosed a partial tear of the patellar tendon, but that it affected a small area. Dr. Freehill prescribed a hinged knee brace, Naproxen, and referred the claimant to physical therapy. Dr. Freehill released the claimant to full-duty work, but cautioned him to be careful with his knee buckling.

¶ 11 On November 21, 2012, the claimant began physical therapy as prescribed by Dr. Freehill. In the physical therapist's report, dated November 21, 2012, the claimant stated that he injured his knee on October 16, 2012, "when he got into an altercation with someone he was trying to apprehend." The claimant told the therapist that his right knee started to swell after the incident and his pain steadily worsened. He eventually had an MRI which revealed a torn patellar tendon. The therapist's report states that the claimant's leg is weak and it is difficult for him to perform "functional activities."

¶ 12 On November 26, 2012, the claimant notified his supervisor, Captain Hudson, of his injury and completed an accident report. In the accident report, the claimant stated he sustained a torn patellar tendon in his right knee while attempting to arrest a student at Mt. Vernon Alternative School on October 16, 2012. The claimant noted that the injuries to his left forearm and hand had resolved. The claimant also wrote that he did not immediately notify his supervisor because "[he] did not know at the time [he] had a serious injury."

¶ 13 Later that same day, Captain Hudson completed a "Supervisors Accident Investigation" report, which contains substantially the same information as the claimant's accident report. He also drafted a memo to Chief Mendenall, memorializing the information contained in the

claimant's accident report, and adding that the claimant did not immediately report his knee injury because "he thought nothing of it at the time" and "thought his knee would get better after a few days."

¶ 14 On November 27, 2012, Mary Jo Premberton, the director of Human Resources, completed Form 45, entitled "Employer's First Report of Injury." The form contains the same information as the form that the claimant filled out on November 16, 2012.

¶ 15 Also on November 27, 2012, Dr. Freehill restricted the claimant to "sedentary duty with no contact with criminal[s] and no chasing down suspects." She also instructed the claimant to avoid kneeling, squatting, climbing ladders, or running.

¶ 16 On December 12, 2012, the claimant sought treatment from Dr. Nathan Mall, an orthopedic surgeon, at Regeneration Orthopedics. Dr. Mall recorded a history of the claimant having injured himself on October 16, 2012, after wrestling with a 15-year-old whom he was trying to arrest. The claimant told Dr. Mall that he sustained several lacerations to his arms and experienced soreness in his arms and legs. The claimant stated that he had difficulty getting in and out of his vehicle and he used several sick days to take off work due to pain. Dr. Mall noted that the claimant did not immediately report his knee injury to Mt. Vernon because he suffered multiple injuries and his knee pain became more apparent as his other injuries "cleared up." Dr. Mall reviewed the claimant's MRI and noted that the scan revealed a partial tear of the proximal patellar tendon. The doctor also noted that the claimant has been in physical therapy for a month and, while he has improved strength, he continues to experience severe pain upon full extension of his knee and when climbing stairs or steps. Dr. Mall diagnosed the claimant with a "central patellar tendon defect" and recommended arthroscopic surgery. Based upon the claimant's

description of the mechanism of his injury and the fact that he had no prior knee pain, Dr. Mall opined that his injury was work-related.

¶ 17 On January 3, 2013, Dr. Mall operated on the claimant's right knee, performing an arthroscopic patellar tendon debridement, patellar tendon repair, and patellar tendon trephination. In his operative report of that surgery, Dr. Mall wrote that he made a "small incision directly over the area where [the claimant] was most tender" and "[t]his corresponded exactly with the area on the MRI that had a fluid-filled signal and *** was the area of his patellar tendon defect."

¶ 18 Dr. Mall saw the claimant postoperatively on January 16, 2013, and February 13, 2013. In his notes of the February 13, 2013, visit, Dr. Mall noted that the claimant can "get rid of the [knee] brace for most activities." He prescribed a course of physical therapy of two to three times per week for six weeks and told the claimant to "push himself." Regarding the claimant's work status, Dr. Mall authorized the claimant to return to work with the following restrictions: no squatting, kneeling, running, climbing ladders or stairs, and no lifting more than 20 pounds.

¶ 19 On March 20, 2013, the claimant completed the outpatient physical therapy as prescribed by Dr. Mall. According to the therapist's report of March 20, 2013, the claimant stated that he is doing very well and has little to no pain. The therapist also noted that the claimant regained full range of motion and strength in his right knee. On March 25, 2013, Dr. Mall released the claimant to full duty work, noting that he was "doing great."

¶ 20 At the request of Mt. Vernon, the claimant was examined by Dr. Michael Nogalski on April 3, 2013. He wrote in his report that the claimant injured his right knee while attempting to arrest a combative 15-year-old student. According to the report, the claimant did not recall a specific pop or distinct weakness after the event, but he did experience soreness in his right knee. Dr. Nogalski reviewed the claimant's MRI and confirmed that it shows "tendinopathic changes of

the proximal patellar tendon." However, Dr. Nogalski opined that the claimant's right knee condition was not related to the October 16, 2012, accident because the claimant gave an inconsistent history of his injury and he did not seek "immediate medical care." Dr. Nogalski also wrote in his IME report that the claimant "appears to suffer from gout" and that gout "can *** involve tendinous tissues around the knee."

¶ 21 In his deposition, Dr. Nogalski testified that, "contemporaneous histories [are] better than histories obtained after the fact" because stories change over time. He noted that the claimant's incident report and first recorded medical history do not relate his knee pain to the October 16, 2012, work accident. Dr. Nogalski explained that, according to McKee's records, the claimant was not sure if "wrestling around with a co-worker" or "work[ing] on his knees replacing a toilet" caused his knee pain. Dr. Nogalski also testified that "if somebody tears their tendon, they know they tear it *** because they just can't put weight on it and walk on it." He explained, however, that the claimant's presentation of symptoms was consistent with the diagnosis of a partial patellar tendon defect and he agreed that the arthroscopic surgery performed by Dr. Mall was appropriate.

¶ 22 Moreover, when asked on cross-examination whether a torn patellar tendon could result from kneeling, Dr. Nogalski stated, "I don't believe that he had a specific injury so the question is not really answerable." When asked whether the claimant's gout caused his knee condition, Dr. Nogalski acknowledged that no tissue samples were taken from the claimant's knee and no pathology evaluations were performed to make that determination. He also conceded that the claimant reported soreness in his right knee shortly after the October 16, 2012, accident. He further recognized that the claimant had no prior symptoms, medical care, workers' compensation claims or work restrictions with regard to his right knee prior to the accident of

October 16, 2012. Despite these acknowledgements, Dr. Nogalski believed that if the claimant struck his knee on the concrete while attempting to effectuate an arrest, it would have nothing to do with the claimant's symptoms, need for treatment, or surgery.

¶ 23 After reviewing Dr. Nogalski's IME report, Dr. Mall testified that Dr. Nogalski's statement that someone with a patellar tendon injury could not be expected to function and would seek immediate medical attention, is "completely false." While a complete patellar tendon rupture would render the knee nonfunctional, Dr. Mall explained that only 25 percent of the claimant's patellar tendon was defective and his tendon could function normally, though the claimant would experience localized pain with certain activities. Dr. Mall also testified that the act of kneeling for a brief period to change a toilet seal would in no way cause a piece of the patellar tendon to tear. In fact, he testified that kneeling for 10 or 20 hours would not injure the patellar tendon. Moreover, Dr. Mall stated that it was "ludicrous" to think that gout had anything to do with the claimant's knee condition. He noted that the claimant had one instance of gout in his big toe, but it was never confirmed as being gout, as no tests were performed. Dr. Mall further explained that gout is an intraarticular problem and generates pain throughout the entire knee, whereas the claimant's knee pain was specifically localized. And, during the arthroscopic surgery, Dr. Mall found no tophi or crystalline structures in the tendon whatsoever; rather, there was a single defect and the defect was affecting one location—the area of maximal tenderness.

¶ 24 The claimant denied having any problems with his right knee prior to the October 16, 2012, work accident and testified that he had not injured that knee again after the October 16, 2012, accident.

¶ 25 Following a hearing held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2012)), the arbitrator found that the claimant sustained injuries to his right knee which arose out

of and in the course of his employment with Mt. Vernon on October 16, 2012. The arbitrator awarded the claimant temporary total disability benefits and permanent partial disability benefits for the 15% loss of the use of his right leg. Additionally, the arbitrator ordered Mt. Vernon to pay the claimant's reasonable and necessary medical expenses.

¶ 26 Mt. Vernon sought review of the arbitrator's decision before the Commission. In a unanimous decision, the Commission reversed the arbitrator's decision, finding that the claimant failed to prove that his right knee condition was causally related to his work accident of October 16, 2012. The Commission reasoned that the claimant's "contemporaneous records are not consistent" and do not support his claim that he injured his right knee in the October 16, 2012, accident. It noted that the claimant's incident report, which was prepared on the day of the accident, did not report any injury to his right knee, but only that he injured his left forearm and hand. The Commission pointed out that the claimant did not report his knee injury until a month later and found it "odd" that he reported suffering from a "torn patellar [*sic*] tendon" prior to seeking medical care. The Commission also found it "interesting" that, when the claimant saw McKee three days later, "he [did] not mention the altercation but instead talk[ed] about wrestling with a co-worker and being on his knees while fixing a toilet." The Commission stated that the claimant "dates the onset of the knee pain only two weeks before" but he did not recall any specific injury or trauma that triggered the knee pain. Additionally, the Commission dismissed Dr. Mall's causation opinion as unpersuasive, noting that his opinion was based upon the premise that the claimant developed right knee pain at the time of the October 16, 2012, accident; a premise which the Commission found unsupported by the evidence. Instead, the Commission found the opinions of Dr. Nogalski more persuasive because he made "a valid point that the

contemporaneous records should be weighed heavier than those further removed." As a consequence, the Commission denied the claimant benefits under the Act.

¶ 27 Thereafter, the claimant sought judicial review of the Commission's decision in the circuit court of Jefferson County. On July 30, 2015, the circuit court entered an order setting aside the Commission's decision and reinstating the decision of the arbitrator. According to the circuit court's order, "several key factors on which the Commission relie[d upon] in reversing the [d]ecision of the [a]rbitrator are simply not true." For example, the court noted that the claimant first reported his injury to Mt. Vernon on November 26, 2012, "one week *after* he received a diagnosis of a torn patellar tendon." The court also took issue with the Commission's characterization of the claimant's accident as "horseplay," noting that the evidence established the claimant was "subduing a subject," not "wrestling with a co-worker." Finally, the court found the opinion of Dr. Nogalski incredible based upon his statement that the claimant did not have an injury or medical condition. The court held that the Commission's decision was against the manifest weight of the evidence as the record supported an opposite conclusion. This appeal followed.

¶ 28 In this appeal, Mt. Vernon argues that the Commission's determination that there was no causal connection between the claimant's condition of ill-being in his right knee and his accident while working on October 16, 2012, was not against the manifest weight of the evidence. We agree.

¶ 29 The claimant in a workers' compensation case has the burden of proving, by a preponderance of the evidence, all of the elements of his claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). As part of his burden, the claimant must establish that his current condition of ill-being is causally connected to a work-related injury. *Sisbro, Inc. v. Industrial*

Comm'n, 207 Ill. 2d 193, 203 (2003). Whether a causal relationship exists between a claimant's employment and his condition of ill-being is a question of fact to be resolved by the Commission, and its resolution of such a matter will not be disturbed on review unless it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984). In resolving such issues, it is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *O'Dette*, 79 Ill. 2d at 253. For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992). Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's determination of a question of fact 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. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

¶ 30 Applying these standards, we cannot conclude that the Commission's finding that the claimant failed to prove that his right knee condition was causally related to his work accident of October 16, 2012, was against the manifest weight of the evidence. The Commission specifically found that the claimant's testimony that he injured his right knee while attempting to effectuate an arrest was not credible. Significantly, it noted that the claimant's incident report, which he prepared shortly after the incident, contained "an extreme amount of detail" and included photographs of his arm and hand injuries, but failed to reference any injuries to his right knee. Indeed, there is no evidence that he reported the injury to Mt. Vernon on or around October 16, 2012, and there is no record of him having sought medical treatment until November 19, 2012, over a month later. The Commission also noted that the claimant provided an

inconsistent history of his injury. When the claimant finally saw Nurse McKee, he stated that his knee pain started two weeks ago, "without injury or trauma," and that he was not sure if his knee pain was caused by "wrestling around with a co-worker" or "work[ing] on his knees replacing a toilet." It was not until after he had an MRI of his knee that he reported injuring his knee at work. The Commission could reasonably find that the claimant's delay in reporting the alleged injury to Mt. Vernon, his failure to seek prompt medical treatment, and his inconsistent history of his injury, belie the veracity of his testimony.

¶ 31 The Commission also supported its decision by relying upon the medical opinion of Dr. Nogalski who opined that the claimant's right knee injury was not attributable to the October 16, 2012, work accident. Dr. Nogalski based his opinion on the records prepared contemporaneous to the October 16, 2012, accident, including: (1) the claimant's incident report which failed to reference any injuries to his right knee; and (2) McKee's November 19, 2012, record which states that the claimant's symptoms started two weeks prior after he was "wrestling *** with a co-worker" or "replacing a toilet." While Dr. Mall provided a conflicting opinion in this regard—namely, that the claimant's right knee condition was causally related to the October 16, 2012, work accident—the resolution of such conflicting medical opinions falls within the province of the Commission. Here, the Commission dismissed Dr. Mall's causation opinion as unpersuasive, noting that his opinion was based on the assumption that the claimant experienced pain in his right knee immediately after the October 16, 2012, accident; a premise which the Commission found unsupported by the evidence. Although Dr. Mall's opinion contradicted Dr. Nogalski's opinion, the Commission credited Dr. Nogalski's testimony and resolved the conflicts in the evidence in favor of Mt. Vernon. Based upon the record before us, we are unable to conclude

that the Commission's rejection of Dr. Mall's causation opinion was against the manifest weight of the evidence.

¶ 32 As we stated previously, 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. *Ghere v. Industrial Comm'n*, 278 Ill. App. 3d 840, 847 (1996). In this case, the Commission, after considering the conflicting evidence, determined that the claimant failed to sustain his burden of proving that his injuries arose out of and in the course of his employment. Based on the record before us, we cannot say that an opposite conclusion is clearly apparent. We conclude, therefore, that the circuit court erred in reversing the Commission's decision denying the claimant benefits under the Act and reinstating the arbitrator's decision.

¶ 33 For the foregoing reasons, we reverse the judgment of the circuit court and reinstate the Commission's decision.

¶ 34 Circuit court reversed; Commission's decision reinstated.