2017 IL App (1st) 153244WC-U

Order filed: January 20, 2017

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

PROFESSIONAL TRANSPORTATION CORPORATION,	)	Appeal from the Circuit Court of Cook County, Illinois.
Plaintiff-Appellant,	)	
v.	)	Appeal No. 1-15-3244WC Circuit Nos. 11-L-50477; 15-L-50245
ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.*, (Michael Cioffi,	)	Honorable Robert Lopez-Cepero,
Defendants-Appellees).	)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Hudson, Harris, and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The Commission's original determination that the claimant failed to establish that his current condition of ill-being was causally related to a work-related accident was not against the manifest weight of the evidence.

¶ 2 The claimant, Michael Cioffi, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2004)), seeking benefits for injuries to his lumbar spine allegedly sustained on August 20, 2006, while he was employed as a

passenger van driver by Professional Transportation Corporation (employer). Following a hearing on May 4, 2010, Arbitrator Kathleen Hagan found that the claimant had failed to establish that his current condition of ill-being of the lumbar spine was causally related the accident occurring on August 20, 2006. Consequently, the arbitrator awarded no benefits under the Act. The claimant sought review of the arbitrator's award before the Illinois Workers' Compensation Commission (Commission). On April 12, 2011, the Commission issued a decision which unanimously affirmed and adopted the decision of the arbitrator.

¶ 3 The claimant then sought judicial review of the Commission's decision before the circuit court of Cook County where Judge Robert Lopez-Cepero found that the Commission's causation determination was against the manifest weight of the evidence. Specifically, Judge Lopez-Cepero held that the claimant's current condition of ill-being of the lumbar spine was divisible into two separate injuries, one at L-3 and another at L-5. The court held that the Commission's finding as to the alleged injury at L-5 was against the manifest weight of the evidence and remanded the matter to the Commission. The Commission issued a decision on remand finding "in accordance with and pursuant to the order from the Circuit Court" that the claimant's current condition of ill-being at L-5 was causally related to the August 20, 2006, accident. The Commission remanded the matter to arbitration for further proceedings consistent with that finding.

¶ 4 The matter was heard by Arbitrator Peter O'Malley on June 11, 2013, and July 15, 2013. A decision was issued on September 24, 2013, in which Arbitrator O'Malley noted that the Commission's determined in accordance with the circuit court order that the claimant's current condition of ill-being of the lumbar spine at L-5 was casually related to the August 20, 2006, accident. The arbitrator awarded temporary total disability (TTD) benefits for the time period August 21, 2006, through May 4, 2010, for a total of 193 2/7 weeks; reasonable and necessary

medical expenses of $57,382.29; and permanent partial disability (PPD) benefits equal to 30% loss of the person as a whole pursuant to section 8(d)(2) of the Act. 820 ILCS 305/8(d)(2) (West 2004). The employer sought the Commission's review of the arbitrator's award. The Commission decision was issued March 9, 2015. The Commission again noted that the causation finding was mandated by the circuit court. It modified the TTD award, finding that the date of the onset of the claimant's condition of ill-being was October 3, 2006, and reduced the TTD award to 187 1/7 weeks. The Commission further determined that certain medical bills presented at hearing were not related to treatment of the claimant's L-5 condition and reduced the medical award to $52,642.23. The Commission affirmed the PPD award. The employer filed a timely request for judicial review. Judge Lopez-Cepero entered an order confirming the decision of the Commission. The employer filed this timely appeal.

¶ 5 BACKGROUND

¶ 6 The following factual recitation is taken primarily from the evidence presented at the arbitration hearing conducted on May 4, 2010. At the hearing, the claimant testified that he had suffered a stroke on July 28, 2007, which was unrelated to his employment. He testified that the stroke had affected his memory.

¶ 7 The claimant testified that he was 44 years old on August 20, 2006, and was employed as a van driver by the employer. He had been employed in that capacity since 2004. His job duties called for him to drive a van transporting railroad employees from one location to another. On August 20, 2006, he was driving a van on the I-94 expressway in Chicago on route to pick up a railroad crew. He testified that traffic on the expressway was heavy and the traffic in front of him had come to a complete stop. He decreased his speed to approximately 2 miles per hour in anticipation of stopping. As he came to a stop, his van was struck from behind. He testified that the impact was "heavy." He testified that there was damage to the rear bumper of his van. After

the accident, both the claimant and the driver of the rear-ending vehicle drove to a nearby police station and filed accident reports. In the accident report, the claimant indicated groin pain only. The claimant did not seek medical treatment following the accident. The claimant testified that, after filing the police report, he drove his van back to Detroit, Michigan. Upon returning to Detroit, the claimant was instructed by the employer to submit a written accident report. In the report, the claimant noted injury to his groin, "torn, ligaments and cyst." The report is silent as to any reports of low back or lumbar pain.

¶ 8 On September 3, 2006, approximately two weeks after the accident, the claimant sought treatment in the emergency department at Wyandotte Henry Ford Hospital, near his home in Detroit, Michigan. (The claimant testified that he sought treatment at Wyandotte Henry Ford Hospital on August 20, 2006; however, no medical records regarding treatment on that date were included in the record.) Treatment records from September 3, 2006, indicated that the claimant complained of persistent low back pain with gradually increasing pain that began two days prior (*i.e.*, September 1, 2006). The claimant reported the pain on the left side of the low back and left thigh, with tingling and numbness in the left leg. The treatment notes did not contain history of involvement in a motor vehicle accident on August 20, 2006, nor was there any discussion of "the mechanism of the injury." The claimant was prescribed pain medication. The claimant testified at the hearing that, due to his stroke, he had little recollection of what happened at Wyandotte on September 3, 2006.

¶ 9 Medical records from Junction Health Care Center and Clinic in Detroit established that the claimant received treatment for back pain on September 5, 6, 15, 20, and November 2, 2006. Those records, however, contain no information regarding the causation of the claimant's back pain.

¶ 10 On October 3, 2006, the claimant initiated treatment with Dr. Jack Belan, a neurologist at Spine Sports & Occupational Medicine, P.C., in Southfield, Michigan. The claimant gave a history of being in an auto accident on August 20, 2006, in Chicago. The claimant also gave a history of an injury in the 1990s resulting in a herniated disc for which surgery had been recommended. After examining the claimant and reviewing available medical records, Dr. Belan diagnosed a disc herniation of more recent origin than the 1990s at L5-S1. He wrote "[t]he patient reports that his problem began while working in Chicago." However, nothing in the record indicated that Dr. Belan was aware that the claimant had failed to report back pain until two weeks after the accident. Based upon the claimant's history, Dr. Belan opined: [i]t is my opinion that the patient has developed a new disc herniation with radiculopathy on the left side as a result of his MVA on August 20, 2006." Dr. Belan further noted that "[t]he patient's progress is guarded at this time." Dr. Belan further speculated that surgery would be recommended. Dr. Belan has kept the claimant off work since October 3, 2006.

¶ 11 On October 19, 2006, the claimant presented at the emergency department of Oakwood Hospital and Medical Center complaining of back pain. Treatment records indicate that the claimant gave a history of back pain that started earlier that same day after sitting in his lawyer's office for over two hours. The emergency physician recorded a diagnosis of "non-traumatic" low back pain. The claimant was prescribed anti-inflammatory and pain medication.

¶ 12 The record included an MRI performed on March 21, 2004, at Harper-Hutzel Hospital in Detroit. That MRI was interpreted to reveal a herniated disc to the right at L3-L4 with bulging discs and mild stenosis at multiple levels. The records also established that the claimant underwent two MRIs after the August 20, 2006, motor vehicle accident. The first MRI, performed on September 13, 2006, revealed a large L5 disc herniation compressing on the L5 root nerve and a smaller disc herniation on the right side at L3. A second MRI, performed on

May 20, 2008, revealed that the L5 herniation had increased in size and severity since the September 2006 MRI.

¶ 13 On March 19, 2009, the claimant was examined at the request of the employer by Dr. Scott T. Monson, a board certified orthopedic surgeon. Dr. Monson agreed with Dr. Belan's conclusion that the September 13, 2006, MRI revealed a large herniated disc at L5-S1 and agreed that the claimant should consult with an orthopedic surgeon. In addition, Dr. Monson stated that the herniation could have occurred from a recent trauma; however, based upon the fact that the claimant had a disc herniation dating back to 2004, he opined that the L5-S1 herniation was likely the result of degenerative disease rather than a traumatic event. In addition, he observed that the claimant's reports of pain did not seem to comport with disc herniation at L5. Dr. Monson acknowledged that he did not have access to the 2004 MRI. He commented that reviewing the 2004 MRI would have been "helpful" but was not essential to his conclusions.

¶ 14 Arbitrator Hagen found that the claimant had failed to establish a causal connection between his condition of ill-being of the lumbar spine and the August 20, 2006, motor vehicle accident. In support of this conclusion, the arbitrator noted that: (1) the claimant gave no report of any back pain in the two written accident reports given the same day as the accident; (2) the claimant only reported groin pain in those accident reports and the first written record of back pain appears approximately two weeks later on September 3, 2006; (3) when he presented at the Wyandotte Henry Ford emergency department on September 3, 2006, the claimant reported that his back pain was gradual and began on September 1, 2006; (4) the claimant did not mention being involved in a motor vehicle accident in the history he gave at Wyandotte; (5) the Oakwood Hospital treatment notes from October 19, 2006, establish that the claimant reported back pain that only began earlier that day as a result of sitting for two hours in his attorney's office; (6) the treatment records from Oakwood Hospital contain an observation by the emergency physician

that the claimant's back pain was "non-traumatic" in origin; (7) the claimant had a history of degenerative disc disease at multiple levels as revealed by a 2004 MRI; (8) he also had a traumatic disc herniation as the result of a motor vehicle accident in the 1990s for which surgery had been recommended but not carried out; and (9) Dr. Monson opined that the claimant suffered from degenerative disc disease. In addition, the arbitrator observed that Dr. Monson "found no change in the MRI reports from 2004 and 2006." The Commission affirmed and adopted the arbitrator's award.

¶ 15 On judicial review, the circuit court found the Commission's causation finding to be against the manifest weight of the evidence and remanded the matter to the Commission. On remand, the Commission assigned the matter to Arbitrator Peter M. O'Malley, who held a second hearing to address the issue of benefits.

¶ 16 The claimant presented medical bills totaling $57,382.29. The employer offered no opinion testimony calling into question the reasonableness of the bills. The issued was raised, however, that the services covered by these invoices did not differentiate between treatment for pain at L3 and at L5. The arbitrator acknowledged that, pursuant to the order of the circuit court, the condition of ill-being at L3 was not causally related to the claimant's employment, while the condition of ill-being at L5 was causally related to his employment. The arbitrator rejected the employer's argument that the bills should be apportioned, noting that "as a practical matter, it is essentially impossible to separate the [itemized] medical expenses based upon whether they were incurred relative to the L3 or L5 herniations." Accordingly, the arbitrator found all treatment to claimant's lumbar spine to be reasonable and necessary under the Act.

¶ 17 With regard to the period of temporary total disability, the arbitrator found that the claimant had been taken off work as of the date of the accident, August 20, 2006, and had remained under restriction through the date of the May 4, 2010, hearing. The arbitrator further

noted that the employer's examining physician, Dr. Monson, agreed with the conclusion that the claimant was unable to work during this time period. Again, noting that it was a "practical impossibility" to separate any time off work due to the L3 as opposed to the L5 herniation, the arbitrator determined that the claimant was entitled to TTD benefits for the entire period.

¶ 18 With regard to the nature and extent of the claimant's permanent disability, the arbitrator credited the claimant's testimony that he was in a great deal of pain, that he could barely move as result of the pain, and that he was unable to perform basic movements of life without the assistance of his family. In accordance with these factual findings, the arbitrator determined that the claimant was permanently disabled to the extent of 30% of the person as a whole.

¶ 19 The employer sought review of the arbitrator's award from the Commission. The Commission modified the award by finding that the period of TTD did not begin until the claimant was ordered off work by his treating physician on October 3, 2006. In addition, the Commission reduced the medical expenses to exclude items for services unrelated to lumbar spine treatment, such as a bill for removal of a groin cyst, treatment for a sore throat, and treatment related to the claimant's right arm. The employer then sought review in the Circuit Court of Cook County, which confirmed the decision of the Commission. The employer then filed this timely appeal.

¶ 20 ANALYSIS

¶ 21 On appeal, the employer maintains that circuit court erred in overturning the Commission's initial decision finding the claimant failed to establish that his current condition of ill-being was causally related to an industrial accident on August 20, 2006. We agree.

¶ 22 An appeal from a final judgment of the circuit court confirming a decision of the Commission on remand necessarily implicates the propriety of the circuit court's earlier

decision. See *F & B Manufacturing Co. v. Industrial Comm'n*, 325 Ill. App. 3d 527, 531 (2001). Thus, when, as in the instant matter, the Commission's original decision is reversed as against the manifest weight of the evidence, we consider the propriety of the Commission's original decision in any appeal from a final order confirming the Commission's decision on remand. *Glister Mary Lee Corp. v. Industrial Comm'n*, 326 Ill. App. 3d 177, 182 (2001).

¶ 23 To obtain compensation under the Act, a claimant must prove by a preponderance of the evidence that "some act or phase of his employment was a causative factor in his ensuing injuries." *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). Whether a claimant has established the requisite causal connection between his current injuries and an industrial accident is a question of fact for the Commission to determine and that determination will not be overturned on appeal unless it is against the manifest weight of the evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980); *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866 (2010). In resolving disputed issues of fact, including issues related to causation, it is the exclusive purview of the Commission to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to be given to evidence and resolve conflicting evidence, including conflicting medical evidence. *O'Dette*, 79 Ill. 2d at 253; *Hosteny v. Illinois Workers Compensation Comm'n*, 397 Ill. App. 3d 665, 667 (2009). 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). The appropriate test is whether there is sufficient evidence in the record to support the Commission's determination, not whether this court or any other tribunal might reach an opposite conclusion. *Pietrzack v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002).

¶ 24 In the instant matter the employer maintains that the Commission's initial decision finding that the claimant had failed to establish a causal connection between his current condition of ill-being of the lumbar spine and the August 20, 2006, motor vehicle accident was not against the manifest weight of the evidence. We agree. In the initial arbitral decision, as affirmed and adopted by the Commission, there were nine factors articulated in support of the Commission's causation determination. These factors can be grouped into two general findings: (1) the claimant did not report any back pain until approximately two weeks after the accident despite several opportunities to do so; and (2) the weight of the medical evidence did not support a finding that the claimant's current lumbar pain was caused by the August 20, 2006, accident.

¶ 25 Key to the Commission's causation determination was evidence that the claimant reported no back pain for approximately two weeks after the accident despite several opportunities to do so. While no medical opinion testimony addressed whether a herniation at L5 would remain asymptomatic for two weeks after a traumatic injury, the Commission made an inference that it would not. It inferred that an L5 herniation caused by the accident would have manifested immediate pain and that a two-week delay in reports of L5 pain would indicate that the accident was not a causative factor in the claimant's current condition of ill-being. Based upon a review of the record, we find that the Commission's inferences were reasonable. The claimant testified that the motor vehicle accident produced a "heavy impact" and that he suffered an injury to his groin as a result. The claimant reported the groin pain immediately and attributed it to the accident. He did not report any back pain until two weeks after the accident and even then he described the onset of the pain as gradual beginning on September 1, 2006. The first time the claimant was asked to attribute a cause to his back pain, he indicated that it began after sitting in his attorney's office for two hours. The claimant did not attribute his back pain to the August 20, 2006, accident until October 3, 2006, when he gave a history to Dr. Belen

of back pain that "began while working in Chicago," a statement that was in contradiction to the previous statements that the pain began in early September. Based on these facts and the reasonable inferences therefrom, the Commission's finding that the claimant failed to prove a causal connection between his employment and his current condition of ill-being was not against the manifest weight of the evidence.

¶ 26 In addition to the delay in reporting pain after the accident, the Commission also weighed the conflicting medical evidence against the claimant. The proper weight to accord conflicting medical evidence is within the purview of the Commission, and its conclusions in that regard will not be overturned on appeal unless they are against the manifest weight of the evidence. *Hosteny*, 397 Ill. App. 3d at 667. Here, we cannot say that the Commission's interpretation of the medical evidence was against the manifest weight of the evidence. The October 19, 2006, treatment notes from the Oakwood Hospital emergency department characterized the claimant's L5 injury as "non-traumatic," and the claimant had a history of generally located degenerative disc disease. These facts could lead to a conclusion that his current condition of ill-being was entirely degenerative in nature.

¶ 27 The crux of the medical evidence concerned the competing opinions of Dr. Belan and Dr. Monson. Dr. Belan opined that the claimant's L5 condition of ill-being was caused by the August 20, 2006, accident. However, it is apparent from the record that this opinion was based, at least partially, on the incorrect history given to him by the claimant that his pain began "while working in Chicago" *i.e.*, that there was immediate onset of the pain following the accident. While there is no indication that Dr. Belan was questioned as to whether his opinion would be different if he knew that the onset of pain began two weeks after the accident, the Commission likely discounted the weight accorded his opinion on that basis.

¶ 28 In contrast, the Commission gave greater weight to Dr. Monson's opinion that the claimant's current condition of ill-being was likely the result of a degenerative condition and not causally related to the August 20, 2006, accident. The claimant maintains that Dr. Monson's opinion should not to be given any weight because it appears he did not correctly compare the 2004 and 2006 MRIs. Had he done so, the claimant maintains, Dr. Monson would not have persisted in his opinion that the claimant's injury was due to a degenerative condition. This was the argument adopted by the circuit court in reversing he Commission's initial decision. We disagree.

¶ 29 We find that the weight accorded to the medical evidence by the Commission was not against the manifest weight of the evidence. Regarding the role of the 2004 MRI, Dr. Monson acknowledged that he had not reviewed the 2004 MRI and that it would have been "helpful" had he done so. However, he persisted in his opinion that the L5 injury, which was clearly present on the 2006 MRI, was more likely the result of the claimant's degenerative condition. Dr. Monson was aware of the claimant's medical history and testified that he was able to give his opinion regarding causation of the claimant's current condition of ill-being without reference to the 2004 MRI. While the arbitrator's observation that Dr. Monson "found no change in the MRI reports from 2004 and 2006" appears to be incorrect, the weight accorded Dr. Monson's opinion is, nonetheless, supported by the record.

¶ 30 Viewing the record in totality, we cannot say that the Commission's decision regarding causation was against the manifest weight of the evidence. We therefore, affirm the original decision of the Commission finding that the claimant failed to establish that his current condition of ill-being in his lumbar spine was causally related to a work-related motor vehicle accident on August 20, 2006.

¶ 31 Since we have confirmed the Commission's determination that the claimant's condition of ill-being was not causally related to his employment, we need not address the employer's alternative argument that the TTD, medical, and PPD benefits awarded were against the manifest weight of the evidence.

¶ 32 For the foregoing reasons, we find that the Commission's determination that the claimant failed to establish that his current condition of ill-being related to the lumbar spine was causally related to an industrial accident on August 20, 2006, was not against the manifest weight of the evidence. We therefore reverse the judgment of the circuit court finding the Commission's April 12, 2011, decision to be against the manifest weight of the evidence and reinstate the Commission's original decision.

¶ 33 CONCLUSION

¶ 34 The judgment of the judgment of the circuit court which reversed the decision of Commission is reversed. All rulings subsequent to the original decision of the Commission are vacated and the original decision of the Commission is reinstated.

¶ 35 Judgment reversed; Original Commission decision reinstated.