

2017 IL App (1st) 161968WC-U

NO. 1-16-1968WC

Order filed: June 30, 2017

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

PREFERRED MEAL SYSTEMS, INC.,)	Appeal from the
)	Circuit Court of
Appellant,)	Cook County.
)	
v.)	No. 16-L-50065
)	
THE ILLINOIS WORKERS')	Honorable
COMPENSATION COMMISSION, <i>et al.</i>)	Kay M. Hanlon,
(Victor Santiago, Appellee).)	Judge, presiding.

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

ORDER

¶ 1 *Held:* The Commission's finding that the claimant's lower back injuries were causally related to a work-related accident was not against the manifest weight of the evidence.

¶ 2 Preferred Meal Systems, Inc. (the employer), appeals the judgment of the circuit court of Cook County, which confirmed the decision of the Illinois Workers'

Compensation Commission (Commission), that found that the claimant, Victor Santiago, is entitled to benefits under the Act for injuries he sustained to his lower back based on its finding that these injuries were causally related to the claimant's work-related accident of January 9, 2013. For the reasons that follow, we affirm the circuit court's judgment and remand this cause to the Commission for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 (1980).

¶ 3

FACTS

¶ 4 On March 18, 2013, the claimant filed an application for adjustment of claim with the Commission pursuant to the Workers' Compensation Act (the Act) (820 ILCS 310/1 *et seq.* (West 2012)), alleging severe and permanent injury to his back and legs while working for the employer on January 19, 2013. The claimant's application came before the arbitrator for a 19(b) hearing (820 ILCS 310/19(b) (West 2014)) on October 22, 2014, and the application was amended on the claimant's unopposed oral motion to reflect an accident date of January 9, 2013. Thereafter, the following relevant evidence was adduced.

¶ 5 The claimant testified, via an interpreter, that as of the date of the accident, he had been employed by the employer for a period of four or five months. He worked at the employer's warehouse loading and unloading trucks with food. He never missed a day of work for the employer prior to the accident. In addition, he never injured or had any medical treatment for any parts of the body that he is claiming were injured in the accident at issue.

¶ 6 The claimant testified that around 9:55 p.m. on January 9, 2013, he was loading a truck with food. He was loading a pallet with food that weighed more than 120 pounds. When he was pushing the pallet through the ramp, it got stuck on the edge of the truck or the door. He then pulled back the jack with the pallet. When he pulled it, the jack came towards him, his left foot slipped, and all the weight came to his right side. At that moment, he felt extreme pain and heat in his lower back, as well as pain in "the front," and pain and heat in his right leg from the bottom to the top. In spite of this, he continued his shift that night, but left one hour early, at 3:30 a.m., due to the pain.

¶ 7 The claimant testified that he missed work the following day, a Friday, due to extreme pain. Over the weekend, the pain was intolerable, his leg was numb, and his back was swollen. He was unable to sleep due to the pain and the pills he took did not take away the pain. On Monday, January 14, 2013, the employer sent the claimant to its clinic, U.S. Healthworks. He was treated at that clinic from January 14, 2013, until March 5, 2013, and was placed on work restrictions and provided physical therapy at various intervals.

¶ 8 The claimant testified that while he was still on restrictions and receiving physical therapy, the employer fired him on or about January 21, 2013. He treated with U.S. Healthworks for approximately two months after he was fired. He testified that when he was receiving a physical therapy evaluation from U.S. Healthworks, he did not tell them that he had injured his back three months before. Instead, he told U.S. Healthworks during that evaluation he had injured his back three weeks before, which would be the

exact date of the accident at issue. The claimant testified that the treatment he received at U.S. Healthworks did not improve his condition and he sought treatment on his own.

¶ 9 From March 15, 2013, to October 8, 2013, the claimant received care and treatment at Herron Medical Center. When he first went to Herron Medical Center, he told them of his continued back pain, worsening pain in his knee, heel, and toes, as well as cramping and numbing. He started to use a cane for walking. Herron Medical Center sent him for an MRI of his lower back and right hip on March 18, 2013, and he commenced physical therapy at Alivio Physical Therapy from April 11, 2013, to June 28, 2013, consisting of heat, electrical muscle stimulation, ultrasound, spinal manipulation, and lumbar traction.

¶ 10 The claimant testified that at the beginning of physical therapy, there was some improvement, but then the pain returned in his right leg and back and continued through the discontinuation of therapy. Accordingly, he received pain management treatment from Pro Clinics from June 20, 2013, to September 23, 2014, including a series of lumbar injections that took place at Lakeside Surgicenter and additional physical therapy that took place at Elite Physical Therapy from July 26, 2013, to September 5, 2014. The injections relieved his pain for a week to 10 days and then the pain would return.

¶ 11 The claimant testified that, at the direction of his treating physicians, he underwent a functional capacity evaluation (FCE) at Oak Park Medical Center on March 25, 2014. Despite all of the treatment up to the date of the 19(b) hearing, the claimant testified that he remained in an intolerable amount of pain in his lower back, and pain and numbness in his leg. The claimant testified that his treating physicians were then recommending

surgical treatment of his lower back, which he desires to undergo. He further testified that he has been off work at the direction of his treating physicians from January 19, 2013, and remained off work as of the date of the 19(b) hearing. The employer had not provided the claimant any temporary total disability (TTD) benefits.

¶ 12 On cross-examination, when the claimant was asked whether he gave a history to U.S. Healthworks of pain in the right groin and right thigh or hamstring area, the claimant testified that he also complained of his back hurting. When asked if he complained of groin and hamstring pain during physical therapy at U.S. Healthworks, the claimant testified, "I told them all my leg hurt, my back hurt. I always told them that – so, again, I always told him that the lower back was hurting all the way down through the leg, right leg to the toes; the front part of the leg, right leg." When confronted with the fact that the first record of the claimant's complaint of low back pain came from Dr. Khanna from U.S. Healthworks on January 24, 2013, three days after the employer laid the claimant off, the claimant testified, "I had already told them, but I think that this particular doctor finally listened to me about the lower back." The claimant was asked questions of this nature repeatedly during his cross-examination, and never wavered from his testimony regarding the history he gave all of the doctors at U.S. Healthworks at all times.

¶ 13 Several times during cross-examination, the claimant was asked about right groin complaints. In response, he testified that, "I mentioned – so again, I mentioned the lower back, I mentioned the leg. And it wasn't the groin, but it was just once that it was examined," and "the whole leg, I said. I never did mention any private parts," and:

"I complained about the lower back and the leg. On one occasion I would say the

groin was examined, but I always mentioned the lower back and the leg. It was one occasion when they checked the groin to check to see if I had a hernia or not. Never again was this part examined."

¶ 14 Records from U.S. Healthworks were admitted into evidence, and are consistent with the examination and cross-examination of claimant, in that there is no initial record of the claimant's back complaints, and a physical therapy note dated January 30, 2013, noting a back injury three months prior. In addition, U.S. Healthworks records verify that the claimant ceased treatment at that facility in March 2013. Additional details regarding the information contained in these records are included in our analysis of the issue on appeal below.

¶ 15 Records from Herron Medical Center verify the claimant's treatment beginning March 18, 2013. The claimant was given an MRI of the right hip and lumbar spine on that date. While the MRI of the right hip was unremarkable, the MRI of the lumbar spine revealed, as follows:

"At the L5-S1 level, subligamentous posterior disk herniation measuring 2 to 3 millimeters with mildly extruded nucleus pulposus and a small annular tear noted to elevate the posterior longitudinal ligament and indent the ventral and slightly right side of the thecal sac without significant spinal stenosis, nor significant neuroforaminal narrowing."

¶ 16 According to the Herron Medical Center records, the claimant gave exactly the same description of the details of the accident itself that he gave to U.S. Healthworks. These records, as well as those from Alivio Physical Therapy, Pro Clinics, Lakeside

Surgery Center, and Elite Physical Therapy are also consistent with the claimant's testimony regarding his symptoms, treatment, and orders to remain off work. Diagnoses from these records include displacement of lumbar intervertebral disk without myelopathy, lumbrosacral neuritis or radiculitis, unspecified, lumbago, lumbar sprain, and sprain of unspecified site of the hip and thigh.

¶ 17 Records from Pro Clinics verify that by January of 2014, the claimant was waiting for the employer to approve surgical intervention to relieve him of his pain and other symptoms. He suffered from constant low back pain radiating to his bilateral lower limbs, but primarily his right lower extremity, causing numbness and tingling. He had trouble walking, sitting, or standing for long periods of time and used a cane for support when walking due to weakness in his bilateral lower extremities. A percutaneous disk decompression surgery at L4-L5 and L5-S1 was recommended to relieve him of these symptoms.

¶ 18 The claimant's FCE report, completed by Associated Medical Centers of Illinois on March 25, 2014, was admitted into evidence on his behalf. The report concludes that the claimant is able to work at the light-medium demand level but the recommended safe level for the claimant is light duty.

¶ 19 Dr. Bryan Neal testified via evidence deposition taken on September 12, 2014. Dr. Neal testified that he is a self-employed, board-certified orthopedic surgeon who has been in private practice for over 18 years. He conducted an independent medical examination (IME) of the claimant on June 4, 2013, and as a part of that IME, conducted a medical record review. According to Dr. Neal, the claimant, through an interpreter,

referenced his right groin and his right thigh when he was asked what part of the body he injured on the date of the accident. Dr. Neal opined that the medical records did not support any neurological symptoms, neurological injury, or a lumbar spine condition resulting from the incident of January 9, 2013, and that no such condition is causally connected to that accident. Furthermore, Dr. Neal opined that the claimant had reached maximum medical improvement (MMI) as to his hip, groin, and hamstring condition. Dr. Neal testified that his opinion was based on the records he reviewed and the history given to him by the claimant. Dr. Neal testified that contrary to the January 30, 2013, physical therapy evaluation report, which states that the claimant had back pain three months prior to that date, the claimant did not tell him he ever had a prior back injury.

¶ 20 On cross-examination, Dr. Neal testified that he performs approximately six IMEs a week. At the time of the IME, Dr. Neal documented that the claimant had either average or above average credibility with regard to independent medical examinees. Dr. Neal testified that he believed the claimant was in pain during the IME and did not document any exaggeration of pain. Dr. Neal acknowledged that his opinion was largely based on the January 30, 2013, physical evaluation report, which documented a prior back injury. Dr. Neal acknowledged that when the claimant gave him a history of the accident, he described a poking sensation in his back. Dr. Neal agreed that one can experience a small annular tear that leads to extruded disk material, such as that shown on the claimant's MRI, and not experience any acute symptomology temporally related to the insult to the annulus for some time after the injury. In contrast, a sprain to the hamstring would be felt immediately. Finally, Dr. Neal acknowledged that the same

doctor at Healthworks USA who treated the claimant initially noted the claimant's lumbar complaints on January 24, 2013, and this time frame is consistent with the time frame symptoms could be expected to occur had the claimant's annular tear occurred on January 9, 2013, and that the annular tear and pressure on the adjacent nerve root could produce symptoms in the claimant's posterior thigh, hip, and buttock.

¶ 21 A CT scan of the claimant's lumbar spine dated October 16, 2013, was admitted into evidence as a separate exhibit on behalf of the employer. This record was also contained within the records offered by the claimant. This report states that the findings of the CT scan, unlike the MRI, were negative for annular tear at the levels of L2-L3, L3-L4 or L4-L5.

¶ 22 The arbitrator filed a decision on the claimant's 19(b) petition on November 19, 2014. Therein, the arbitrator denied the claimant's request for benefits as to injuries to his lower back and legs, finding that while he proved that injury to his right groin, thigh, and hamstring, is causally connected to the work accident, he failed to prove that the injury to his lumbar spine is causally connected. The claimant appealed to the Commission, which unanimously reversed the decision of the arbitrator on January 6, 2016. The Commission detailed its findings that the claimant's annular tear, current symptoms, and need for medical treatment are causally related to his work accident of January 9, 2013, awarding TTD benefits and prospective medical expenses. The employer appealed to the circuit court of Cook County, which issued a judgment confirming the Commission's decision on June 20, 2016. The employer filed a timely notice of appeal to this court.

¶ 23

ANALYSIS

¶ 24 We begin our analysis ever mindful of the applicable standard of review. "It is well settled that in workers' compensation cases it is the function of the Commission to decide questions of fact and causation, to judge the credibility of witnesses and to resolve conflicting medical evidence." *Teska v. Industrial Comm'n*, 266 Ill. App. 3d 740, 741 (1994). A reviewing court will not overturn findings of the Commission unless the findings are against the manifest weight of the evidence. *Id.* Findings are against the manifest weight of the evidence when an opposite conclusion is clearly apparent. *Id.* at 742.

¶ 25 Here, the Commission's decision outlines specifically the findings that led it to conclude that the claimant's lumbar spine condition, resulting pain, and need for surgery is, as a matter of fact, causally related to his work injury of January 9, 2013. Unlike the arbitrator, who reasoned that the claimant did not report back pain until March 5, 2013, the Commission found reference to lower back complaints in the U.S. Healthworks medical records as early as January 14, 2013, where a neck or back injury is referenced and the January 24, 2013, medical record indicating an added diagnosis of lumbar disc syndrome. The Commission noted that these references were only 15 days post accident, rather than almost two months as indicated by the arbitrator.

¶ 26 The Commission focused also on the claimant's MRI of March 18, 2013, which revealed the annular tear at L5-S1. The Commission noted that the employer offered little credible evidence to support an inference that the tear was not caused by the accident. Rather, the Commission noted that Dr. Neal testified that the mechanism of injury could cause the tear, which may or may not produce symptoms. The Commission

found the record devoid of evidence demonstrating that the claimant had a pre-existing back condition or that he was under any restrictions prior to the undisputed accident. With regard to the CT scan of October 16, 2013, the Commission noted that the annular tear identified on the March 18, 2013, MRI was located at L5-S1, while the L5-S1 disc was not referenced in the CT scan report. Rather the CT scan report was of L2-L3, L3-L4, and L4-L5.

¶ 27 The Commission explicitly found the claimant's testimony to be credible, finding no evidence of malingering or symptom magnification, and noting that the employer's IME doctor himself testified that he found the claimant to be credible. In conclusion, explicitly based upon the claimant's credible testimony and the medical records documenting back issues shortly after the accident, the Commission found that the claimant's lumbar condition, in addition to his right groin, thigh, and hamstring conditions, is causally related to the work accident.

¶ 28 We find the Commission's decision to be well-reasoned, and are aware of our province to defer to the factual findings set forth in the Commission's decision. See *Teska*, 266 Ill. App. 3d at 741. In reviewing the employer's brief, the employer fails to cite any authority in support of its argument that the Commission's findings in this case were against the manifest weight of the evidence or that a conclusion opposite that reached by the Commission is clearly apparent. Instead, the employer gives an interpretation of the facts that it believes would support an opposite conclusion. For example, the employer argues that the Commission misinterpreted the January 14, 2013, record as a list of current complaints when it is actually a history form and the claimant

was listing past complaints. Assuming *arguendo*, that the Commission misinterpreted the January 14, 2013, medical record as a record of a back complaint in relation to this accident, the Commission specifically found the claimant's testimony credible, and the claimant was unwavering in his assertion that at all times he was treating with U.S. Healthworks, he verbalized his lower back complaints. It is within the province of the Commission to make the determination that the claimant is telling the truth, regardless of whether his complaints were accurately recorded in the initial treatment records created at the employer's health clinic. See *Teska*, 266 Ill. App. 3d at 741.

¶ 29 The employer cites to certain testimony of Dr. Neal, who concluded in his report and on direct examination that there was no causal connection between the claimant's back problems and the accident. The employer argues that the claimant offered no contradiction to these opinions, but cites no authority for the proposition that the claimant must do so. Accordingly, the employer has forfeited this argument on appeal. See Ill. Sup. Ct. Rule 341(h)(7) (eff. Jan. 1, 2016); *TTC Illinois, Inc./Tom Via Trucking v. Workers' Compensation Comm'n*, 396 Ill. App. 3d 344, 355 (2009). Forfeiture aside, this court has held that " 'medical evidence is not an essential ingredient to support the conclusion of the *** Commission that an industrial accident caused the [claimant's] disability.' " *Corn Belt Energy Corp. v. Workers' Compensation Comm'n*, 2016 IL App (3d) 150311WC, ¶29 (quoting *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63 (1982); *Pulliam Masonry v. Industrial Comm'n*, 77 Ill. 2d 469, 471 (1979)). " 'A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to

prove a causal connection between the accident and the employee's injury.' " *Id.* (quoting *International Harvester*, 93 Ill. 2d at 63-64.) In addition, although the Commission may not arbitrarily reject a sole medical opinion, such an opinion is not binding on the Commission simply by virtue of the fact that it is the sole medical opinion. *Kraft General Foods v. Industrial Comm'n*, 287 Ill. App. 3d 526, 532 (1997).

¶ 30 Here, the Commission did not arbitrarily reject the opinion of Dr. Neal. Instead, the Commission found that the basis for Dr. Neal's causation opinion on direct examination was based solely on his assumption that the claimant did not make low back complaints initially. The Commission found, as a matter of fact, that Dr. Neal's assumption was not correct and contradictory to the testimony of the claimant, who Dr. Neal, as well as the Commission, found to be credible. In addition, the Commission relied on Dr. Neal's testimony on cross-examination that an annular tear could actually cause symptomology in the lower back within the time frame that the medical records demonstrate the claimant made such complaints. Additionally, we note that Dr. Neal testified on cross-examination that his opinion was also based largely on the January 30, 2013, record of a prior back injury. However, the claimant testified this record was inconsistent with the history of his injury that he gave on that date, which is that he had a back injury three weeks, rather than three months prior to January 30, 2013, which is exactly consistent with the date of accident. For these reasons, we cannot say that an opposite conclusion than that reached by the Commission regarding causation is clearly apparent.

¶ 31 Finally, the employer argues that because the claimant produced no testimony from a treating physician specifying what surgical procedure was prescribed for the claimant or that the surgical procedure was causally connected to the accident, the Commission's decision is against the manifest weight of the evidence. We find this argument lacks merit. The Commission's decision finds that the claimant is entitled to prospective medical treatment as recommended by Dr. Abdellatif during his July 10, 2014, examination of the claimant and orders the employer to authorize and pay for prospective medical treatment "as recommended by Dr. Abdellatif." A review of this treatment record reveals that Dr. Abdellatif, a pain management specialist, determined that the claimant needed a surgical consultation. As the evidence in the medical records illustrates that conservative measures to treat the claimant have failed, the Commission's decision to require the employer to pay for a surgical consultation, and related treatment going forward, is not against the manifest weight of the evidence.

¶ 32 CONCLUSION

¶ 33 For the foregoing reasons, the judgment of the circuit court of Cook County, which confirmed the decision of the Commission, is affirmed, and this matter remanded to the Commission pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 (1980).

¶ 34 Affirmed and remanded.