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

JACKIE PAGE,)	Appeal from the Circuit Court
)	of Kane County.
Plaintiff-Appellant,)	
)	
v.)	No. 15-MR-1119
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, ARAMSCO, INC., and)	
LIBERTY MUTUAL INSURANCE CO.,)	Honorable
)	David R. Akemann,
Defendants-Appellees.)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The Commission's decision regarding causation was not against the manifest weight of the evidence where conflicting medical opinions existed and other evidence was not so compelling as to render an opposite conclusion to the Commission's clearly apparent.

¶ 2 I. INTRODUCTION

¶ 3 Claimant, Jackie Page, appeals an order of the circuit court of Kane County confirming a decision of the Commission denying him benefits in accordance with the provisions of the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)). The Commission—with one Commissioner dissenting—reversed a decision of the arbitrator awarding benefits to claimant for an injury to his left hip. Claimant now appeals, and, for the reasons that follow, we affirm.

¶ 4 II. BACKGROUND

¶ 5 The following is taken from the transcript of the arbitration hearing, the arbitrator's decision, and the Commission's subsequent decision. The hearing occurred on November 15, 2013. Claimant testified first at the hearing. He stated he was 52 years old and had been employed as a truck driver for respondent, Aramsco, Inc., driving a 26-foot long, straight truck. He performed deliveries and picked up freight, and his duties included handling freight. Typically, he used either a hand-jack to move freight or simply used his hands.

¶ 6 On August 24, 2011, claimant testified, he was working full time and without any physical work restrictions concerning his left hip. He was climbing into the rear of his truck, and he slipped on a wet surface. Claimant added that his left-foot slipped off the rear of the platform. Claimant felt “a strain in [his] lower back [and] left lower back and groin area.” Claimant reported the injury to respondent and subsequently sought treatment at the Sherman Health Clinic, which is the “company clinic.” Claimant first sought treatment on August 29, 2011. On that date, he reported “[l]ower back pain, left side[,] and groin pain, left side.” At the clinic, claimant was examined and placed on light duty. Respondent had no light duty work available.

¶ 7 Claimant testified that he followed up at Sherman on September 1, 2011. They recommended physical therapy for his leg. Physical therapy lasted for about a month. After it

concluded, he followed up at Sherman. Claimant continued to complain of lower-back and left-hip pain. He was referred to Dr. Michael Berkson, whom he first saw on October 10, 2011. During this visit, he complained of lower-back, left-groin, and left-hip pain. Berkson ordered an X ray of claimant's left hip. After reviewing the X ray, Berkson recommended a left-hip replacement. Claimant, however, decided to put off the surgery and returned to work. He continued to work through the end of 2011. During this period, claimant had difficulty "walking, standing, moving," "lifting, [and] climbing."

¶ 8 In March 2012, claimant returned to see Berkson. Claimant was experiencing left-hip pain; however, his back was not symptomatic. Berkson ordered more X-rays and again recommended surgery. Claimant decided to go ahead with the hip replacement, as "[t]he pain had gotten to be unbearable." The surgery was performed on April 3, 2012, and claimant remained off work through July 15, 2012. Following the surgery, claimant again engaged in physical therapy. Claimant was released to full duty as of July 6, 2012, and he returned to performing his truck-driving job for respondent at that time. Though he was able to do his job, his range of motion was limited. Claimant experienced some pain, and he "[d]idn't have a lot of strength in [his] left leg." Claimant was terminated by respondent in May 2013.

¶ 9 Claimant testified that prior to August 24, 2011, he had never had any problems with his left hip or lower back. Claimant acknowledged that he had fallen on his left side in March 2013; however, that only resulted in a few days discomfort and did not require medical treatment. At the time of the arbitration hearing, claimant continued to experience pain on a daily basis.

¶ 10 On cross-examination, claimant reaffirmed that he had not experienced any problems with his left hip prior to August 24, 2011. He explained that he slipped when stepping from a ladder on the back of the truck to the bed and that the wet surface he slipped on was on the bed

of the truck. His left foot slipped under him and “off the back end of the truck.” He did not actually fall, as he was “holding onto the handle in the rear of the truck.” When he slipped, his body twisted. Claimant “felt an immediate pull in [his] lower back” and “also on the left groin area.” He reported the incident immediately.

¶ 11 Claimant acknowledged that when he first sought medical treatment, he reported that he was experiencing pain in his left groin area rather than his left hip. He began to feel left-hip pain “about a week into [his physical] therapy.” The pain in his back resolved during physical therapy. When he first saw Berkson, he was seeking treatment only for his left hip. Berkson did not place any work restriction on claimant, and claimant continued to perform his job until the surgery was performed. Between the time he saw Berkson in October 2011 and the time of his surgery (April 2012), claimant underwent no treatment for his left hip.

¶ 12 On redirect-examination, claimant testified that he did not “sustain any further trauma to [his] let hip at work” or elsewhere between October 2011 and the surgery. On recross-examination, claimant agreed that though he had difficulties performing some of his duties, he was nevertheless able to perform them.

¶ 13 Claimant submitted medical records in support of his claim, including a series of treatment notes from Berkson, claimant’s treating physician. These records indicate that, on October 10, 2011, Berkson diagnosed claimant with “left hip pain post trauma” and “exacerbation of left hip pain secondary to osteoarthritis, left hip.” (Emphasis omitted.) Additionally, Berkson opined, “I believe the injury sustained exacerbated the preexisting condition, but clearly caused worsening symptoms.” He added that “the only thing that will solve this patient’s hip condition is hip replacement arthroplasty.”

¶ 14 Respondent submitted the evidence deposition of Dr. Kevin Walsh. Walsh testified that he is a “general, practicing orthopedic surgeon.” Less than 10% of his practice involves independent medical examinations. He estimated that up to 80% of these examinations were performed on behalf of respondents. He is board certified.

¶ 15 He evaluated claimant on June 11, 2013. He first reviewed claimant’s medical records, though he did not have access to claimant’s X rays. Walsh’s diagnosis was “status post left hip replacement for osteoarthritis of the left hip.” He then opined that claimant’s need for hip surgery was unrelated to claimant’s fall on August 24, 2011. Walsh explained that if the fall had affected claimant’s osteoarthritic hip, claimant would have been in immediate pain. However, claimant’s hip pain did not develop for several days. Moreover, the mechanism of injury described by claimant—slipping and twisting the hip—“does not cause an aggravation or acceleration of osteoarthritis.” While such movements might be painful, they would not have “anatomically altered” the hip. Walsh opined that had claimant aggravated his left hip, claimant’s pain would have been more significant when he first presented to Sherman. Walsh opined that claimant needed no further treatment resulting from the accident and that he reached maximum medical improvement (MMI) within weeks of August 24, 2011. If the accident had caused the need for the hip replacement, claimant would have more likely than not had hip pain at the time of his initial visit to Sherman.

¶ 16 On cross-examination, Walsh denied knowing how many independent medical examinations he performed. However, he later agreed that no one would know how many he did per year better than him and that he probably did between 100 and 150. He charges \$2,900 per examination and an additional \$1,500 per hour for depositions, with a 2-hour minimum. He further acknowledged that possibly all independent medical examinations he conducted in

connection with workers' compensation claims were performed on behalf of the employer. He could not remember how long his examination of claimant took. He agreed that he reviewed no medical record that indicated claimant had received any treatment for his left hip prior to the accident on August 24, 2011. Walsh claimed that he made over \$100,000 per year doing "[a]ll medical-legal work" (he added that this included depositions related to patients he treated). However, he later replied, "probably," when asked if he was saying he "only generate[d] \$400,000 total for the medical, forensic legal work [he did] combined."

¶ 17 Walsh stated that pain radiating down the left groin was "possibly" consistent with an injury to the left leg and left hip. Walsh disagreed with Berkson's opinion that the condition of claimant's left hip was causally related to claimant's at-work accident. He attributed claimant's condition entirely to "the degenerative process of aging." Walsh further opined that claimant's obesity was a contributing factor. He acknowledged that he had seen claimant on only one occasion.

¶ 18 On redirect-examination, Walsh agreed that claimant may have had symptoms predating the accident for which he did not seek treatment. On recross-examination, Walsh testified that he had not seen any medical records predating the accident that indicated claimant had preexisting hip pain.

¶ 19 The arbitrator found, *inter alia*, that claimant's left-hip condition was causally related to his at-work accident of August 24, 2011. The arbitrator noted that claimant initially complained of low-back pain and pain radiating into the groin. X rays of the left hip were taken, which showed "advanced arthritic changes with loss of joint space, irregularity of the femoral head with large spur formation about the acetabulum and femoral neck." Sherman, the company clinic, referred claimant to Associates in Orthopedic Surgery (Berkson) for treatment of the left hip.

The history recorded by Berkson states that claimant reported injuring his left hip during the August 24, 2011, accident. Berkson diagnosed “left hip pain post trauma” and “exacerbation of left hip pain secondary to osteoarthritis, left hip.” He opined: “I believe the only thing that will solve this patient’s hip condition is hip replacement arthroplasty. I believe the injury sustained exacerbated the pre-existing condition, but clearly caused worsening symptoms.”

¶ 20 The arbitrator found Walsh to lack credibility. Specifically, he noted that Walsh’s opinion was based, to a significant extent, on his belief that claimant did not have hip pain at the time of the initial trauma. However, the arbitrator pointed out, claimant complained of radiating groin pain during his initial visit to Sherman and left-hip pain three days later during another visit to Sherman. Moreover, the arbitrator observed that prior to the injury, claimant’s hip was not symptomatic. The arbitrator further criticized Walsh’s conclusion that claimant’s “pre-existing left hip condition was not aggravated or accelerated by the work accident because, [in Walsh’s words,] ‘Dr. Berkson didn’t insist the patient have a hip replacement when he initially saw him.’ ” However, during that initial visit, Berkson did opine that “the only thing that will solve this patient’s hip condition is hip replacement arthroplasty.” Based on these defects in Walsh’s opinion, the arbitrator concluded Walsh’s opinion was unpersuasive.

¶ 21 The Commission—with one commissioner dissenting—disagreed. It first observed that claimant did not seek medical treatment until four days after the accident and when he did, his complaints were primarily lumbosacral in nature. The majority found persuasive Walsh’s opinion that claimant would have been in “immediate pain to a more significant extent” had he aggravated his left hip. It noted Walsh’s testimony indicating claimant was not in severe pain following the accident. Moreover, it credited Walsh’s testimony that the described mechanism of injury would not have aggravated claimant’s osteoarthritis. Walsh, the Commission observed,

“noted that [claimant’s] arthritic symptoms might have been temporarily aggravated by the accident, but no permanent damage would have occurred.” The majority then stated that Walsh’s opinion was more persuasive than Berkson’s and found that claimant had failed to prove causation.

¶ 22 The dissenting commissioner criticized Walsh for failing to acknowledge that claimant was, indeed, experiencing left-hip pain following the accident. He noted that claimant complained of left-groin pain during his initial visit to Sherman and on his second visit, someone at Sherman determined that X rays of claimant’s left-hip were warranted. All of these events occurred within a week of the accident. Furthermore, prior to the accident, claimant had not sought medical care for his left hip. The dissenting commissioner further found “Dr. Berkson to be much more credible than Dr. Walsh.”

¶ 23 The circuit court of Kane County confirmed the Commission. This appeal followed.

¶ 24 III. ANALYSIS

¶ 25 The sole dispositive issue of this appeal is whether the finding of the Commission’s majority concerning causation is contrary to the manifest weight of the evidence. Causation raises a question of fact. *Certi-Serve, Inc. v. Industrial Comm’n*, 101 Ill. 2d 236, 244 (1984). Hence, we will disturb the decision of the Commission on this issue only if it is contrary to the manifest weight of the evidence. *Id.* A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Caterpillar, Inc. v. Industrial Comm’n*, 228 Ill. App. 3d 288, 291 (1992). A claimant bears the burden of establishing a causal connection between his or her condition of ill being and employment. *Caterpillar Tractor Co. v. Industrial Comm’n*, 129 Ill. 2d 52, 63 (1989). The Commission is primarily responsible for resolving conflicts in the evidence, assigning weight to evidence, assessing the credibility of witnesses, and

drawing reasonable inferences from the record. *Hosteny v. Industrial Comm'n*, 397 Ill. App. 3d 665, 674 (2009). It is not our function to reweigh evidence or substitute our judgment for that of the Commission. *Setzkorn v. Industrial Comm'n*, 353 Ill. App. 3d 1049, 1055 (2004).

¶ 26 The evidence in this case was conflicting, and the Commission resolved that conflict in favor of respondent based on Walsh's deposition testimony. Walsh testified that there was no causal relationship between claimant's work-related accident and the condition of ill-being of his left hip. Moreover, Walsh set forth two reasons for his opinion. First, he relied on claimant's initial failure to report significant pain in his left hip. An exacerbation of claimant's osteoarthritis, according to Walsh, would have been accompanied by immediate and significant pain. Second, he noted that the mechanism of injury described by claimant—twisting—is not the sort of action that would exacerbate or accelerate osteoarthritis.

¶ 27 It is true that there were certain defects with Walsh's opinion. Notably, claimant did report some pain in his groin and hip within a week of the accident, as confirmed by records from Sherman. Moreover, Walsh relied on Berkson's purported failure to "insist" on a hip replacement when Berkson did, in fact, opine during claimant's initial visit that only a replacement would resolve claimant's condition. Such matters go to the weight to which Walsh's opinion is entitled. See *Snelson v. Kamm*, 204 Ill. 2d 1, 26 (2003). Weight is a matter for the Commission in the first instance. *Hosteny*, 397 Ill. App. 3d at 674. Neither of these deficiencies are so significant that we could say that the Commission was required to reject Walsh's testimony.

¶ 28 Undoubtedly, there is some evidence supporting claimant's position. Berkson opined as to the existence of a causal relationship. Further, a state of good health, followed by an accident, and then an ensuing state of ill health, allows an inference that the accident was the cause of the

ensuing state of ill being. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63-64 (1982). However, Walsh's opinion remains. In the end, this case came down to resolving a conflict in the evidence between Walsh's opinion on the one hand and Berkson's opinion and claimant's reported absence of symptoms prior to the accident, on the other. Resolving conflicts in the evidence is primarily a matter for the trier of fact, which is the Commission. *Hosteny*, 397 Ill. App. 3d at 674. Given the evidence on both sides of the issue, we cannot say that an opposite conclusion is clearly apparent.

¶ 29 In short, the Commission's decision is not contrary to the manifest weight of the evidence.

¶ 30 IV. CONCLUSION

¶ 31 In light of the foregoing, the judgment of the circuit court of Kane County confirming the decision of the Commission is affirmed. All issues raised by claimant that are dependent on the success of his argument on causation are moot.

¶ 32 Affirmed.