

2017 IL App (3d) 160430WC-U

NO. 3-16-0430WC

Order filed August 2, 2017

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
 WORKERS' COMPENSATION COMMISSION DIVISION

GARY DESTRI,)	Appeal from the
)	Circuit Court of
Appellant,)	Rock Island County.
)	
v.)	No. 15-MR-318
)	
THE ILLINOIS WORKERS' COMPENSATION COMMISSION, <i>et al.</i> (Vandermeersch Lawn Services, Appellee).))))	Honorable James G. Conway Judge, presiding.

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

ORDER

¶ 1 *Held:* The Commission's decision to deny the claimant benefits under the Illinois Workers' Compensation Act (the Act) (820 ILCS 310/1 *et seq.* (West 2014)), based on its finding that the claimant failed to prove a work-related accident caused his condition of ill-being, is against the manifest weight of the evidence.

¶ 2 The claimant, Gary Destri, appeals the judgment of the circuit court of Rock Island County, which confirmed the decision of the Illinois Workers' Compensation Commission (Commission), to deny him benefits based on its finding that the claimant failed to prove that a work-related accident caused his condition of ill-being. For the reasons that follow, we reverse the judgment of the circuit court which confirmed the Commission's decision, reverse the Commission's decision, and remand for further proceedings consistent with this decision, including a resolution of all remaining issues related to the claimant's entitlement to benefits under the Workers' Compensation Act (the Act). 820 ILCS 310/1 *et seq.* (West 2016).

¶ 3 **FACTS**

¶ 4 On March 15, 2012, the claimant filed an application for adjustment of claim with the Commission pursuant to the Act (820 ILCS 310/1 *et seq.* (West 2010)), alleging injury to his abdomen on November 18, 2011, while lifting and pulling at work for the employer. On the application, the claimant indicated that the nature of the injury was "to be proven." The claimant's application came before the arbitrator on February 11, 2014, for a hearing pursuant to section 19(b) of the Act. 820 ILCS 310/19(b) (West 2012). At that time, the arbitrator granted the claimant's motion to amend his application to indicate injury to his whole person, rather than his abdomen, because the injuries "have to do with urinary-type issues." At the arbitration hearing, the following relevant evidence was adduced.

¶ 5 The claimant testified that he was a laborer for the employer on November 18, 2011, working on a project at Bishop Hill Wind Farms, where he was washing the wind

towers. The project began on November 5, 2011. He worked eleven days on the project and after working on November 18, 2011, he noticed blood in his underwear and started urinating blood. The claimant testified that the only thing he could attribute the bleeding to was the strain of the work he was doing, dragging a 40 or 50 pound hose through the mud. In addition, he strained when he carried 50 pound tanks of fuel at different times throughout the day, as well as dragging himself through heavy mud while trying to use a pressure washer on the wind towers.

¶ 6 The claimant testified that he called his doctor, Dr. Schwartz, and made an appointment for the following Monday. The doctor told him to stay home, drink plenty of water, and no heavy lifting. The claimant testified that he called the employer the same night and told him he was urinating blood and the employer said someone else could work for him.

¶ 7 The claimant testified that he went to his appointment with Dr. Schwartz on November 21, 2011. The claimant testified that after his initial appointment with Dr. Schwartz, he called the employer and told the employer that he strained himself working on the wind towers. He had seen Dr. Schwartz for similar problems in 2008. The claimant attributed his problems at that time to the same type of work for the employer, when he worked at a project pressure washing at the Tiskilwa wind towers. He had no problems with blood in his urine between March 2008 and November 2011.

¶ 8 The claimant testified that following his treatment for the hematuria in November 2011, he returned to work for one day the Monday after the Thanksgiving holiday. That night the employer told him he was getting too old for the type of work they were doing

and terminated his employment. The claimant testified regarding his medical treatment following his termination, which is reflected in the medical records summarized below.

¶ 9 Medical records from St. Margaret's Hospital were introduced into evidence showing that the claimant presented at the emergency room on March 13, 2008, complaining of left lower back pain and chills, but no fever. He was bloated and complained of pressure and a burning sensation with urination. He gave a history of past benign prostatic hyperplasia and was taking Terazolin for his prostate at the time he presented to the emergency room. A urinalysis revealed hematuria. A CAT scan of the abdomen showed a possible tumor in the bladder, a possible blood clot, and an enlarged prostate. The claimant was admitted into the hospital and Dr. Christian Schwartz was called in for a consultation. Past medical history for this consultation states that the claimant reported having prostate issues in 1999 with irritation, urinary symptoms, difficulty with initiating a urinary stream and the flowing of his urinary stream. He reported that medication for these symptoms had yielded some improvement. Social history for the consultation included a strong positive for the use of tobacco and that the claimant worked out at the "Wind Farm" and does a lot of heavy lifting, pushing, and ladder climbing.

¶ 10 Dr. Schwartz's assessment of the claimant during his March 2008 hospital admission was that he was retaining blood clots in his bladder. Dr. Schwartz performed a cystoscopy on the claimant on March 14, 2008. The claimant's post-operative diagnosis was trilobar hyperplasia of the prostate with prostatic varicosities. Dr. Schwartz's post-operative assessment reads as follows:

"Gross hematuria. I suspect this is in relationship to an enlarging prostate. I will be initiating both Alpha blockade and 5 alpha-reductase inhibitor treatment on this patient. I will be following the patient in the office. If the patient continues to bleed[,] transurethral resection of the prostate will be needed. If the patient continues to have bladder outlet obstructive symptoms a prostate resection may be required."

¶ 11 The claimant presented to Dr. Schwartz at his Illinois Urologic Health Surgeons office on November 21, 2011, with recurrent bouts of gross hematuria. The claimant had another cystoscopy at that time, as well as another CT scan, and again prostatic enlargement and increased vascularity were the identified factors. Flomax and Advodart were prescribed in an attempt to reduce prostate size and relieve outlet obstruction. The CT scan revealed a simple renal cyst. No etiology for hematuria was identified on CT scan.

¶ 12 In February 2012, the claimant again reported to Dr. Schwartz with significant gross hematuria. At that time, the claimant reported intermittent bouts of gross hematuria developed with straining, lifting, and pushing. During that visit, Dr. Schwartz recommended that the claimant continue with both of the prostate medicines, Flomax and Advodart, and undergo a laser ablation or surgical procedure to correct his prostatic enlargement and prostatic varicosities.

¶ 13 On March 12, 2012, the claimant presented at St. Margaret's Hospital for the suggested surgeries. In medical records from that date, it was noted that the claimant did not see blood in his urine, did not see blood clots, and did not have a burning sensation

when urinating, and was not having trouble urinating. The claimant stated that he was not in pain and had no recent unwanted weight loss. Notes from his visit state that the bleeding developed at work with straining and lifting, and the bleeding had since resolved. This is the first record following the date of the alleged accident that referenced the claimant's work. The claimant underwent a green light laser ablation of his prostate on that date and returned to Dr. Schwartz's office the next week for Foley catheter removal. Dr. Schwartz then saw the claimant on April 12, 2012, at which time the claimant reported improved urinary flow strength and resolution of the post-operative hematuria. The claimant was then seen in the office on May 15, 2012, at which time he complained of acute development of nighttime urination, 8 to 10 times per night, and Dr. Schwartz prescribed Enablex, an antibiotic and pain medicine.

¶ 14 The claimant returned to Dr. Schwartz on June 19, 2012, complaining of continued burning with urination, nocturia every 45 minutes, and an episode of gross hematuria with clot passage two to three weeks prior that occurred after strenuous physical activity. Dr. Schwartz's notes state that he discussed with the claimant and his wife the need for the claimant not to participate in strenuous activities that increase abdominal pressure and/or place pressure on the prostate, including bike riding, boating, riding lawn mowers, gardening, squatting and lifting/pulling heavy objects (ex. 50 lb. bag of soil). Dr. Schwartz explained that the claimant's continued engagement in these activities could be contributing to his prolonged healing process. At that time, the claimant stated that he would decrease his physical activity level for the next month. Dr. Schwartz also explained that the claimant needed to increase his fluid intake during the

day since he notices that his dysuria is increased when he has not been drinking fluids. Finally, Dr. Schwartz explained that a cystoscopy may be needed in the future for further evaluation if his symptoms persist.

¶ 15 The claimant returned to Dr. Schwartz on July 17, 2012, reporting that he had not had an episode of gross hematuria since his preceding office visit and that his nocturia and dysuria had resolved. On that date, Dr. Schwartz reported that the claimant would increase activity as tolerated and was able to return to work at that time. Dr. Schwartz explained to the claimant that if he increases his activity level and he re-develops gross hematuria, that he needs to contact him for follow-up.

¶ 16 On September 20, 2012, Dr. Schwartz wrote a letter to a "Mr. Glassman," stating that the claimant had been seen in his urology clinic "over the past 3 – 5 years." The letter states that Dr. Schwartz had reviewed the claimant's medical chart and history, and it is his opinion that the development of gross hematuria, prostatic, urethral bleeding, is related to heaving lifting, straining, and pushing while at work. The letter states that as of that time, the bleeding has stopped and the patient has been both medically and surgically managed.

¶ 17 On November 7, 2012, the claimant presented at Dr. Schwartz's office reporting that his gross hematuria had resolved, he was able to lift, strain, and push without bleeding, but his urinary frequency and dysuria were persisting. On December 5, 2012, and January 30, 2013, visits to Dr. Schwartz, it appears that the claimant's complaints were limited to urinary frequency although Dr. Schwartz noted that he would continue to observe the claimant for recurrence of hematuria.

¶ 18 Dr. Schwartz testified via evidence deposition taken on March 27, 2013. He testified that he is board certified in urology. He testified, by reference to his medical records, regarding his treatment of the claimant. Dr. Schwartz also testified that during past visits with the claimant, he has a definitive recall of discussing heavy lifting, pushing, straining, and specifically, walking around in the mud, as complaints that the claimant had over the years. It wasn't until February 23, 2012, that Dr. Schwartz put actual notes in the medical records reflecting these prior discussions. When asked whether he had an opinion within a reasonable degree of medical certainty as to whether the prostatic bleeding and the need for the surgery was causally related to the work activity as described to him by the claimant, Dr. Schwartz stated:

"[The claimant] has been very firm in his belief that work has caused his bleeding, and this has been reported over and over in the office to me that straining, pushing, lifting[,] and heavy work created it; and in periods of being off work he would not have these periods of bleeding. So I do believe that patients with enlarged prostates and abnormal blood vessel development, the straining, lifting, pushing creates bleeding, and I do believe that the bleeding that he experienced was related to the work that he did."

¶ 19 However, Dr. Schwartz made clear that the claimant's enlarged prostate was in no way work-related. On cross-examination, Dr. Schwartz testified that the claimant was employed in the same type of employment for each bout of hematuria, including the 2008, 2011, and 2012 bouts. Dr. Schwartz agreed that the claimant's hematuria was a recurrent issue for which he first saw the claimant in 2008.

¶ 20 Dr. Herbert Sohn testified via evidence deposition taken on August 23, 2013. He testified that he is a board-certified urologist with a general urologic practice and the employer hired him to review the medical records describing the claimant's treatment for prostatitis and hematuria from 2008 through 2012. In his urologic practice, he treats patients with hematuria and prostatitis similar to that which was indicated in the claimant's records. Dr. Sohn testified that he produced a report based on his record review on July 16, 2013, and he has an independent recollection of each and every clinical finding or opinion therein.

¶ 21 Dr. Sohn testified that it is his understanding that the claimant was working for the employer, "a lawnmower company" for about a week, and was using equipment, and claimed that he had blood in the urine after using the equipment. After reviewing Dr. Schwartz's records, Dr. Sohn testified that it was clear that the claimant's hematuria was emanating from his prostate. Dr. Sohn opined that such a condition develops from an infection of the prostate, which cause prostatitis, or inflammation of the prostate. Dr. Sohn explained that the prostatitis is what causes the hematuria because the inflammation caused by the infection causes enlargement of the blood vessels of the prostate, which in turn, causes bleeding.

¶ 22 Dr. Sohn agreed with Dr. Schwartz's interpretation that the claimant had intermittent bouts of gross hematuria that had been exacerbated with heavy lifting and straining. He explained that when a person has an enlargement of the blood vessels of the prostate to begin with, any pressure in the area of the prostate can cause bleeding. The pressure can come from a bowel movement or bicycling, as these both place pressure

on the prostate. Dr. Sohn testified that there is no way to tell whether the claimant's one week of work for the employer or some other activity caused the claimant's hematuria, because once you have prostatitis, many things can cause the bleeding.

¶ 23 On cross-examination, Dr. Sohn testified that any kind of strain, including work activity consisting of lifting generators, stringing out heavy hoses, and working in mud could aggravate the claimant's preexisting prostate condition to cause the blood in his urine that re-developed in November 2011. Dr. Sohn agreed that from the records, it appears that the claimant did not receive any treatment for hematuria between April 2008 and November 2011. On re-direct examination, Dr. Sohn agreed that the claimant described heavy lifting, pushing, and ladder climbing as causing a strain in 2008, did not mention it in November 2011, and again mentioned it in February 2012.

¶ 24 Dr. Sohn's report states as follows:

"My impression at this time is the [claimant] had a long history of prostatitis with increased vascularity in the prostate causing bleeding. He claims that it is from heavy lifting and working; however, in my experience this could happen at any time. The fact that he worked only one week and lifting during this time could have been either a coincidence or due to straining. Straining could have been from a hard bowel movement, walking, running[,] or any other activity. I do not feel that the hematuria was secondary to his working as much as he had a 3-year history of hematuria or blood in the urine prior to this and also the fact that he did not report it for about four months from the time that he had the problem would make me think that it is not due specifically to working. In conclusion, I would

say that the patient had a long history of blood in the urine. In my experience, and I have seen this many times[,] [i]t is mostly due to a vascular prostate secondary to an enlarged prostate and they can bleed at any time and not related specifically to working. Therefore, I do not consider this secondary to his job or working or whatever he did at the lawn services. I would say this is a chronic situation that has preceded and succeeded his working time at the lawn service."

¶ 25 Chad Vandersmeech testified that he is the owner of the employer and that he did not receive notice that the claimant was claiming a work-related injury until March of 2012. On the evening of November 11, 2011, the claimant called him and said he had to go to the doctor for blood in his urine but did not claim it was work-related. Mr. Vandersmeech testified that he terminated the claimant's employment in December of 2011 due to a conflict in personalities between the claimant and the site supervisor, who gave him an ultimatum to terminate the claimant or the employer would be replaced on the job site. Mr. Vandersmeech testified that it was a clear policy that accidents be reported before an employee leaves a job site and that an accident report be completed. In 2009, when the claimant injured his elbow while working for the employer, the claimant filled out an accident report.

¶ 26 On March 18, 2014, the arbitrator issued a decision denying the claimant benefits. The arbitrator found that the claimant failed to prove that an accident occurred that arose out of and in the course of the claimant's employment with the employer. The claimant sought review before the Commission, and the Commission entered an order on March 25, 2015, affirming and adopting the arbitrator's decision. The claimant appealed to the

circuit court of Rock Island County, which entered judgment confirming the Commission's decision on June 20, 2016. The claimant now appeals to this court.

¶ 27

ANALYSIS

¶ 28 In the case before us, the Commission found that the claimant failed to prove he sustained an injury arising out of and in the course of his employment. Whether an injury arose out of and in the course of one's employment is generally a question of fact. *Kawa v. Workers' Compensation Comm'n*, 2013 IL App (1st) 120469WC, ¶77. We will not reverse findings of fact unless they are against the manifest weight of the evidence. *Id.* For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent from the record on appeal. *Id.* at ¶78. 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. *Id.* Resolution of conflicts in medical testimony is also within the province of the Commission. *Id.* (citing *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206 (2003)). However, despite the high hurdle that the manifest weight of evidence standard presents, it does not relieve us of our obligation to impartially examine the evidence and to reverse an order that is unsupported by the facts. *Id.* at ¶79. In the present case, and for the following reasons, we hold that the Commission's finding that the claimant did not sustain an accident arising out of the course and scope of his employment with the employer is against the manifest weight of the evidence.

¶ 29 In a workers' compensation case, the claimant 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). One such element is the occurrence of a work-related accident. *Elliott v. Industrial Comm'n*, 303 Ill. App. 3d 185, 188 (1999). Our Supreme Court has explained that an "'accident' is not a technical legal term but encompasses anything that happens without design or an event which is unforeseen by the person to who[m] it happens" and that "an injury is accidental within the meaning of the Act when it is traceable to a definite time, place and cause and occurs in the course of employment unexpectedly and without affirmative act or design of the employee." *International Harvester Co. v. Industrial Comm'n*, 56 Ill. 2d 84, 88-89 (1973). More recently, our Supreme Court has clarified that a disabling injury must have occurred "in the course of employment" and it is this element that refers to the time, place, and circumstances surrounding the injury. *Sisbro*, 207 Ill. 2d at 203. That is to say, for an injury to be compensable, it generally must occur within the time and space boundaries of the employment. *Id.* (citing 1 A. Larson, *Workers' Compensation Law* §12.01 (2002)).

¶ 30 In the case before us, the claimant clearly suffered from a pre-existing condition—an enlarged prostate with prostatic varicosities. Our Supreme Court has held that, in a case where a claimant suffers from a pre-existing condition, recovery will depend on the claimant's ability to show that a work-related accidental injury aggravated or accelerated the condition such that the claimant's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply a result of a normal degenerative process of the condition. *Sisbro*, 207 Ill. 2d at 204-205. In addition, it is

axiomatic that employers take their employees as they find them, and even though an employee has a pre-existing condition that may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can also be shown that the employment was a causative factor. *Id.* at 205.

¶ 31 In the case at bar, the Commission's determination that the claimant did not sustain a work-related accident was based solely on the opinion of Dr. Sohn, who testified that the claimant's hematuria could have been caused by any number of daily activities that place pressure on the prostate, including the work the claimant performed on the day in question, but there is no way to tell what actually caused the hematuria to develop on the day in question. However, this speculative opinion on the part of Dr. Sohn is belied by the claimant's testimony and that of the claimant's treating physician, Dr. Schwartz. The claimant testified that he saw blood in his underwear after straining and heavy lifting for the employer on the date of accident. The claimant experienced the same bleeding in March 2008 after performing the same duties for the employer, and these are the only two occasions in which he experienced such symptoms.

¶ 32 Dr. Sohn's opinion is further weakened by the fact that in performing his record review and completing his report, it is clear that he did not have a clear understanding of the claimant's job duties on the date in question. This is shown by his opinion in his report that he did not consider the hematuria to be secondary "to his job or working or whatever he did at the lawn services." In addition, Dr. Sohn agreed with Dr. Schwartz that the duties the claimant performed on the date of accident could cause hematuria to develop in someone with a prostate in the condition of the claimant's. Accordingly, we

find that Dr. Sohn did not effectively contradict the testimony of Dr. Schwartz on the issue of work-related accident, and the Commission's determination that he did so was against the manifest weight of the evidence.

¶ 33

CONCLUSION

¶ 34 For the foregoing reasons, the judgment of the circuit court of Rock Island County, which confirmed the Commission's decision to deny the claimant benefits under the Act, is reversed, the Commission's decision is reversed, and the cause is remanded to the Commission for further proceedings consistent with this decision, including a resolution of all remaining issues related to the claimant's entitlement to benefits under the Act. 820 ILCS 310/1 *et seq.* (West 2016).

¶ 35 Circuit court's judgment reversed; Commission's decision reversed; cause remanded.