

Workers' Compensation
Commission Division
Order Filed December 15, 2017

No. 3-16-0593WC

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

PRAIRIE FARMS DAIRY,)	Appeal from the
)	Circuit Court of
Appellant,)	Peoria County
)	
v.)	No. 16 MR 558
)	
THE ILLINOIS WORKERS' COMPENSATION)	
COMMISSION <i>et al.</i> ,)	Honorable
)	Katherine S. Gorman,
(Leroy Watts, Appellee).)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hudson, Harris, and Moore concurred in the judgment.
Presiding Justice Holdridge specially concurred.

ORDER

¶ 1 *Held:* We: reversed that portion of the circuit court's order which confirmed the Illinois Workers' Compensation Commission's (Commission) award of permanent partial disability (PPD) benefits to the claimant under section 8(e) of the Workers' Compensation Act (Act) (820 ILCS 305/8(e) (West 2014)), and affirmed the circuit court in all other respects; vacated the Commission's award of PPD benefits to the claimant and remanded the matter back to the Commission with directions to enter a PPD award supported by written findings as required by section 8.1b(b) of the Act (820 ILCS 305/8.1b(b) (West 2014)).

¶ 2 Prairie Farms Dairy (Prairie) appeals from an order of the circuit court of Peoria County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission) awarding the claimant, Leroy Watts, benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2004)), including permanent partial disability (PPD) benefits under section 8(e) of the Act (820 ILCS 305/8(e) (West 2014)). For the reasons which follow, we: (1) reverse that portion of the circuit court's judgment which confirmed the Commission's PPD award and affirm its judgment in all other respects; (2) vacate the Commission's PPD award; and (3) remand the matter back to the Commission with directions to enter a PPD award supported by written findings as required by section 8.1b(b) of the Act (820 ILCS 305/8.1b(b) (West 2014)).

¶ 3 The following factual recitation is taken from the evidence adduced at the arbitration hearing conducted on September 25, 2015.

¶ 4 At all relevant times, the claimant was employed by Prairie as a "box crew/stacker" and had been so employed since December 2008. His duties included boxing gallon milk jugs, stacking the boxes, and loading them onto trucks.

¶ 5 The claimant testified that, on November 30, 2013, he slipped and fell forward striking his chest and right knee as he was walking backwards in a cooler as he attempted to pull a stack of milk. According to the claimant, the floor of the cooler was wet. The claimant gave immediate notice of the occurrence and completed an Incident Report in which he wrote that he was stacking milk when he fell forward landing on his chest and right knee.

¶ 6 The claimant first sought medical care in the evening of November 30, 2013, at the emergency room of Methodist Medical Center. The records of that visit contain entries which state that the claimant reported that he fell and was experiencing pain in his right knee and that

he also stated that he lost his balance at work and fell, twisting his right knee. The records reflect that the claimant was found to have mild to moderate swelling of the right knee and was diagnosed as suffering from a right knee sprain. Following treatment, the claimant was released.

¶ 7 The claimant returned to the emergency room at the Methodist Medical Center on January 4, 2014, complaining of a headache. The records of that visit do not contain any notation that the claimant complained of right knee pain. The records state that the claimant denied any pain in his legs or difficulty walking. On examination, no tenderness or edema in the claimant's right knee was noted, and he had a full range of motion.

¶ 8 At the request of Prairie, the claimant was evaluated on January 10, 2014, at the Illinois Work Injury Resource Center (IWIRC). The records of that visit state that the claimant gave a history of having fallen forward and striking his knee on a milk crate and the cooler floor when he lost his footing as he was pulling a stack of milk. On examination, the claimant was diagnosed as having a right knee contusion/sprain and prescribed physical therapy. He was authorized to continue working with self-regulated job modifications.

¶ 9 The claimant was next seen at IWIRC on January 17, 2014. According to the notes of that visit, the claimant complained of right knee pain. He reported that he was working full duty without restrictions.

¶ 10 The claimant returned to IWIRC on February 27, 2014, and was seen by Dr. Stopka. The claimant complained of persistent right knee pain and thought that the pain was getting worse. The records of that visit note that the claimant had missed three office visits and was not attending physical therapy. On examination, Dr. Stopka noted tenderness in the claimant's right knee and a decreased range of motion. The doctor ordered an MRI of the claimant's right knee to rule out ligamentous pathology.

¶ 11 When the claimant was next seen at IWIRC on March 4, 2014, he reported that his right knee pain was getting worse. Dr. Stopka restricted the claimant to light duty work with lifting up to 20 pounds. According to the claimant, however, Prairie did not offer him work within his restrictions and commenced paying him temporary total disability (TTD) benefits.

¶ 12 On March 12, 2014, the claimant had an MRI scan of his right knee as had been ordered by Dr. Stopka. The radiologist's report noted a horizontal tear of the body and posterior horn of the medial meniscus, diffuse chondromalacia, and a small joint effusion.

¶ 13 When the claimant was seen at IWIRC on March 13, 2014, he was diagnosed with a right knee medial meniscal tear and referred to Midwest Orthopedic Center for an orthopedic consult.

¶ 14 On April 10, 2014, the claimant was seen at Midwest Orthopedic Center by Dr. Michael Gibbons. The notes of that visit reflect that the claimant gave a history of having slipped on a wet floor while stacking boxes at work on November 30, 2013, falling, and landing on his right knee. Although not 100% sure, the claimant thought that he had twisted his knee. Dr. Gibbons examined the claimant and diagnosed him as having sustained a right knee medial meniscus tear and a mild compartment chondrosis. Concluding that conservative treatment had failed, Dr. Gibbons recommended that the claimant undergo a right knee arthroscopy.

¶ 15 On May 23, 2014, the claimant had surgery to repair the medial meniscus tear. Dr. Gibbons performed a right knee arthroscopy with partial medial meniscectomy and a chondroplasty of the medial femoral condyle.

¶ 16 Dr. Gibbons saw the claimant post-operatively on June 2, 2014, and recommended a course of physical therapy.

¶ 17 The claimant was seen at Midwest Orthopedic Center by a physician's assistant on July 3, 2014. The notes of that visit reflect that the claimant was authorized to return to work on July 14, 2014, after completing physical therapy.

¶ 18 The claimant was discharged from physical therapy on July 11, 2014, and returned to full-duty work at Prairie on July 14, 2014. According to the claimant, he initially had knee pain and difficulty performing his job, but his supervisor "worked with him."

¶ 19 On August 10, 2014, the claimant again presented at the emergency room of Methodist Medical Center, this time complaining of chest pains. The records of that visit do not contain any notation that the claimant complained of right knee pain. According to the records, the claimant's musculoskeletal examination was normal.

¶ 20 On November 25, 2014, the claimant completed an accident report at Prairie stating that he injured his right knee on that day when he slipped as he was "pulling stacks across the moving chains" and putting away products. The claimant testified that, although he aggravated his right knee, he did not require any medical treatment as a result of the incident.

¶ 21 At the recommendation of his attorney, the claimant was examined by Dr. Frank Russo on February 23, 2015. Dr. Russo testified to the history of injury that the claimant gave which was consistent with the claimant's arbitration testimony. He stated that the claimant denied injuring his right knee either before or after November 30, 2013. Dr. Russo stated that he reviewed the claimant's medical records from Methodist Medical Center, IWIRC, and Midwest Orthopedic Center, but did not review any medical records prior to November 30, 2013. According to Dr. Russo, on examination of the claimant, he noted obvious swelling of the claimant's right knee, tenderness in the medial compartment, limited range of motion with flexion of the right knee, and an altered gait, and in his opinion, the conditions are permanent.

Dr. Russo diagnosed the claimant as having a right medial meniscus tear, status post arthroscopic partial meniscectomy, and a small chondral lesion of the right medial femoral condyle, status post chondroplasty. Dr. Russo opined that the claimant's work accident of November 30, 2013, caused the meniscal tear in the claimant's right knee and either caused or aggravated the condylar condition. Dr. Russo also opined that the claimant's November 30, 2013, accident necessitated his May 23, 2014, surgery. Dr. Russo concluded that the claimant had a rating of 2% impairment of his lower extremity as a result of his November 30, 2013, accident.

¶ 22 After completing an accident report on July 16, 2015, the claimant went to the emergency room at Methodist Medical Center, complaining of right knee pain. He gave a history of having stepped on a conveyor belt and twisting his right knee while working at Prairie. According to the record of that visit, an examination of the claimant revealed normal alignment of his right knee, decreased range of motion and medial joint line tenderness, but no swelling. The claimant was prescribed Ibuprofen and advised to seek follow-up care at IWIRC.

¶ 23 On August 10, 2015, the claimant sought treatment at the emergency room of the Methodist Medical Center, following an automobile accident. According to the records of that visit, the claimant reported that the accident caused him to hit the back of his head on the seat of his car and that he suspected that he also hit his right shin due to the swelling and pain in his leg. The claimant was diagnosed with foot and cervical strains.

¶ 24 During the course of the arbitration hearing, the claimant denied having injured his right knee before his accident of November 30, 2013. However, the record reflects that he completed an accident report on November 23, 2013, stating that he injured his right knee when he fell while stacking product. After being shown the report, the claimant admitted having completed the document. The claimant also testified that he did not injure his right knee after his accident

of November 30, 2013. However, his testimony in this regard is belied by the accident reports which he completed on November 25, 2014, and July 16, 2015, in which he claimed right knee injuries. Although the records of his physical therapist and IWIRC's records state that the claimant was noncompliant with physical therapy, he disputed the assertions that he was not compliant with the physical therapy protocol for his right knee.

¶ 25 The claimant testified that he experiences pain when walking and occasionally wears a knee brace. He stated that he takes over-the-counter Aleve for pain.

¶ 26 Following the hearing, the arbitrator found that the claimant sustained injuries to his right knee which arose out of and in the course of his employment with Prairie on November 30, 2013. The arbitrator ordered Prairie to pay \$8,591.74 for reasonable and necessary medical services rendered to the claimant and granted Prairie a \$7,492.63 credit under section 8(j) of the Act (820 ILCS 305/8(j) (West 2014)), with the caveat that it hold the claimant harmless from any and all claims or liabilities that may be made against him by reason of having received such payments but only to the extent of the credit. In addition, the arbitrator granted Prairie a \$8,810.42 credit for TTD benefits paid to the claimant. Finally, the arbitrator awarded the claimant 48.375 weeks of permanent partial disability PPD benefits under section 8(e) of the Act (820 ILCS 305/8(e) (West 2014)), for a 22.5% loss of use of his right leg.

¶ 27 Prairie sought a review of the arbitrator's decision before the Commission. In a unanimous decision entered on June 17, 2016, the Commission reduced the claimant's PPD award to 32.25 weeks of benefits for a 15% loss of use of his right leg. In all other respects, the Commission affirmed and adopted the arbitrator's decision.

¶ 28 Prairie sought judicial review of the Commission's decision in the circuit court of Peoria County. On September 8, 2016, the circuit court entered an order confirming the Commission's decision. This appeal followed.

¶ 29 Prairie argues that the Commission's finding of a causal connection between the claimant's work-related accident of November 30, 2013, and his condition of right knee ill-being is against the manifest weight of the evidence. In support of its argument in this regard, Prairie notes that the claimant did not seek medical treatment for his right knee from November 30, 2013, when he was seen at the Methodist Medical Center and January 10, 2014, when he was evaluated at IWIRC. Prairie also contends that the claimant gave varying histories of the mechanism of his injury to his medical providers. Most significantly, Prairie asserts that the claimant's denial of any injuries to his right knee either before or after November 30, 2013, is "incredulous" in the face of the documentary evidence to the contrary. The thrust of Prairie's argument is that the claimant was not credible, and his testimony cannot support a finding of causation.

¶ 30 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, determine the weight to be given their testimony, and to 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).

¶ 31 In that portion of his decision which the Commission adopted, the arbitrator set forth in great detail the inconsistencies between the claimant's testimony and the documentary evidence. Nevertheless, the decision states that the "preponderance of the evidence dictates that a causal relationship exists between the [claimant's] right knee condition of ill-being and accident sustained on November 30, 2013." We are not at liberty to reweigh the evidence. The fact that this court might not have reached the same conclusion as the Commission on the issue of causation is not the test of whether the Commission's determination is supported by the manifest weight of the evidence. The 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). In this case, we believe that there is.

¶ 32 The claimant testified to the mechanism of his injury on November 30, 2013. And although the histories which he gave to his medical providers are not without some variance, they are by no means contradictory. Further, there is no dispute concerning the claimant's right knee condition of ill being: he had a horizontal tear of the body and posterior horn of the medial meniscus, diffuse chondromalacia, and a small joint effusion. The condition was established by the claimant's MRI scan, the records of Midwest Orthopedic Center and Dr. Gibbons, and the deposition testimony of Dr. Russo. As to causation, Dr. Russo's opinion is the only causation opinion in the record. We are not unmindful of the issue concerning the claimant's credibility but neither was the Commission; and it was the function of the Commission to determine the

weight to be accorded the issue. On the basis of the record, we are unable to conclude that an opposite conclusion to that reached by the Commission on the question of causation is clearly apparent. We find, therefore, that the Commission's causation determination is not against the manifest weight of the evidence.

¶ 33 Prairie next argues that the Commission's award of medical expenses, and specifically the expenses of the claimant's May 23, 2014, surgery, is against the manifest weight of the evidence. Its argument in this regard is essentially a repeat of its argument on causation. Having rejected Prairie's causation argument, we also reject its argument addressed to the Commission's award of medical expenses for the same reasons. Our conclusion in this regard is further supported by Dr. Russo's opinion that the claimant's November 30, 2013, accident necessitated his May 23, 2014, surgery and the total absence of any contrary medical opinion.

¶ 34 Prairie's final arguments are addressed to the Commission's award of PPD benefits for the claimant's 15% loss of use of his right leg. Prairie argues both that the amount of the award is against the manifest of the evidence and that, in making the award, the Commission failed to comply with the requirements of section 8.1b of the Act. As to the later argument, Prairie asserts that the Commission failed to explain in its decision the relevance and weight of any of the factors enumerated in the statute in its determination of the claimant's disability.

¶ 35 The nature and extent of a claimant's disability is a question of fact to be determined by the Commission. *Oscar Mayer & Co. v. Industrial Comm'n*, 79 Ill. 2d 254, 256 (1980). However, section 8.1b(b) of the Act provides that, in determining the extent of a claimant's PPD, the Commission is to base its determination upon five enumerated factors along with the level of impairment set forth in a physician's disability impairment report and explain in its written decision the relevance and weight of the factors used in addition to the impairment report. 820

ILCS 305/8.1b(b) (West 2014); *Corn Belt Energy Corp. v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150311WC, ¶ 52. The question of whether the Commission complied with the requirements of section 8.1b of the Act is one of law which we review *de novo*. *Elliott v. Industrial Comm'n*, 303 Ill. App. 3d 185, 187 (1999).

¶ 36 In this case, the Commission's written decision states:

“Based upon a review of the record as a whole, and taking into account the criteria and factors pursuant to Section 8.1b of the Act, the AMA impairment rating of 2% loss of use of the lower extremity or 1% man as a whole provided by Dr. Russo, Petitioner's return to work full duty as a box crew/stacker, Petitioner's age of 48, the lack of evidence of any impact on his ability to earn wages in the future, and the evidence of some disability contained within the medical records, the Commission modifies the Arbitrator's permanent partial disability award from 22.5% loss of use of the right leg to 15% loss of use of the right leg under Section 8(e) of the Act.”

Although the cited paragraph in the Commission's decision clearly states the factors which the Commission considered in arriving at its PPD award, it does not explain the weight that the Commission placed on any of the factors enumerated in section 8.1b(b). An explanation of the weight placed upon the various factors for consideration is required under section 8.1b(b) and is of particular importance in this case in light of the fact that Dr. Russo found an impairment rating of 2% loss of use of the claimant's lower extremity; whereas, the Commission awarded the claimant PPD benefits based upon a 15% loss of use of his right leg.

¶ 37 The foregoing analysis leads us to conclude that the Commission's decision fails to satisfy the requirements of section 8.1b(b) of the Act. We, therefore, vacate the Commission's

award of PPD benefits and remand this matter to the Commission with directions to comply with the requirements of section 8.1b of the Act and explain in a written order both the relevance and weight which it placed on each of the factors enumerated in section 8.1b(b) in awarding the claimant PPD benefits. Having vacated the Commission's PPD award, we decline to address Prairie's argument that a PPD award based upon a 15% loss of use of the claimant's right leg is against the manifest weight of the evidence. Whether a PPD award for 15% loss of use of the claimant's right leg is supported by the manifest weight of the evidence is dependent upon the weight that the Commission places upon each of the statutory factors for consideration, and our resolution of the question must, therefore, await the Commission's written explanation.

¶ 38 Based upon the foregoing analysis, we: (1) reverse that portion of the circuit court's judgment that confirmed the Commission's PPD award and affirm the judgment in all other respects; (2) vacate the Commission's PPD award; and (3) remand the matter to the Commission with instructions to render a PPD award supported by written findings as required by section 8.1b(b) of the Act.

¶ 39 Circuit court affirmed in part and reversed in part; Commission decision vacated in part and remanded with directions.

¶ 40 PRESIDING JUSTICE HOLDRIDGE, specially concurring:

¶ 41 I join the majority's judgment. Section 8.1b(b) of the Act provides that, if the Commission relies upon any factors in addition to the physician's impairment report in determining the level of a claimant's permanent partial disability (PPD), the Commission must "explain" the relevance and weight of any such factors in a written order. 820 ILCS 305/8.1b(b) (West 2014). In determining the level of PPD in this case, the Commission expressly relied upon factors other than the physician's impairment report but provided no written explanation of the

relevance of those factors or the weight it assigned to any of them. Accordingly, I agree with the majority that, under the facts presented here, we should remand the matter and direct the Commission to provide a written explanation in accordance with section 8.1b(b). See *Corn Belt Energy Corp. v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150311WC, ¶¶ 51-52.

¶ 42 I write separately to note that, in enforcing the requirements of section 8.1b(b), we should be careful not to intrude upon the province of the Commission. The nature and extent of a claimant's disability, including the extent of a claimant's PPD, are questions for the Commission (*Baumgardner v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 274, 278 (2011)), and the Commission is entitled to determine the weight that should be accorded the evidence (*Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 405 (1984)). "[B]ecause of the Commission's expertise in the area of worker's compensation, its findings on the question of the nature and extent of permanent disability should be given substantial deference." *Con-Way Freight, Inc. v. Illinois Workers' Compensation Comm'n*, ¶ 25 (quoting *Mobil Oil Corp. v. Industrial Comm'n*, 309 Ill. App. 3d 616, 624 (1999)). Thus, in applying section 8.1b(b) (and in reviewing the Commission's compliance with that section in future cases), we should take care not to impose overly burdensome requirements that limit the Commission's considerable discretion to conduct an independent inquiry and to weigh the evidence as it sees fit. Where, as here, the Commission provides *no* explanation of the relevance or weight of the factors at issue, we must remand for a further written explanation as required by section 8.1b(b). However, if the Commission provides some written explanation of these issues (even a minimal explanation), I believe we should tread cautiously in evaluating the sufficiency of the Commission's explanation lest we infringe upon the Commission's discretion and disregard its superior expertise in this area.