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Carla Bender
4th District Appellate
Court, IL

2017 IL App (4th) 160238WC-U

NO. 4-16-0238WC

Order filed August 4, 2017

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

STEVEN BELLITO,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Macoupin County.
	)	
v.	)	No. 15-MR-67
	)	
THE ILLINOIS WORKERS'	)	Honorable
COMPENSATION COMMISSION, *et al.*	)	Kenneth Deihl,
(Monterey Coal Company, Appellee).	)	Judge, presiding.

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

ORDER

¶ 1 *Held:* The Commission's decision to deny the claimant benefits pursuant to the Occupational Diseases Act (820 ILCS 310/1 *et. seq.* (West 2014)) was not against the manifest weight of the evidence.

¶ 2 The claimant, Steven Bellito, appeals the judgment of the circuit court of Macoupin County which confirmed the decision of the Workers' Compensation

Commission (Commission) denying him benefits under the Occupational Diseases Act (Act) (820 ILCS 310/1 *et. seq.* (West 2014)) for his alleged contraction of coal workers' pneumoconiosis (CWP) or some other breathing-related occupational disease while working for the employer, Monterey Coal Company. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 FACTS

¶ 4 On February 25, 2006, the claimant filed an application for adjustment of claim with the Commission pursuant to the Act (820 ILCS 310/1 *et seq.* (West 2006)), alleging shortness of breath and exercise intolerance as a result of the inhalation of coal mine dust, including but not limited to coal dust, rock dust, fumes, and vapors, for a period in excess of 22 years. The claimant's application came before the arbitrator on August 15, 2014, where the following relevant evidence was adduced.

¶ 5 The claimant testified that he is 57 years old and worked for the employer for almost 24 years as an underground coal miner, where he was exposed to coal dust, silica, glue fumes, diesel fumes and coal fire smoke. He last worked for the employer on December 28, 2007, which is the date the Monterey #1 coal mine closed. He first worked as a laborer, followed by a stint as a roof bolter and finally a buggy runner. He testified that beginning in the 1990s, he began noticing breathing problems and generally declining health.

¶ 6 The claimant testified that he smoked approximately a pack a day "on and off" between the ages of 16 and "35 or 40." He then testified that he hasn't smoked for "10 or 12 years." As of the time of the hearing, he experienced breathlessness upon walking

approximately 100 yards or climbing 10 to 15 stairs. He uses Symbicort and a Spiriva inhaler.

¶ 7 Reggie Ruyle testified that he is a retired coal miner who worked for the employer at the Monterey mine for 33 years. He testified that he worked with the claimant and noticed him breathing harder over the course of time. He testified that he and the claimant worked in a very dusty environment and that he and the claimant are still social acquaintances. Similarly, James Chronister, a retired coal miner who worked with the claimant over the course of his 31 years testified that over time, he noticed the claimant breathing harder, moving slower, sweating more, and needing to rest more often. He also still sees the claimant socially.

¶ 8 Medical records offered by the claimant were admitted into evidence. These records include notes from the claimant's family doctors dating as far back as 1987. Dr. Sidwell's treatment records span from 1987 to 2006. At his new patient appointment on May 6, 1987, Dr. Sidwell described the claimant as a 30 year old male with no known medical problems or allergies. The note states that the claimant exhibited no shortness of breath, a normal chest examination, and no fever. The claimant did have "a little bit of cough[,] sometimes productive." The note states that the claimant "did work in a coal mine and does smoke."

¶ 9 Over the years, the claimant presented to Dr. Sidwell on numerous occasions complaining of nasal stuffiness and cough. Each time, Dr. Sidwell diagnosed either sinusitis, upper respiratory infection, or occasionally bronchitis. Starting in about 1990, it appears that the claimant's sinusitis was chronic. He would come in with some cough,

but in almost all cases, even if a slight bit of wheezing was noted, the claimant was negative for shortness of breath. In 1991, he complained of right sided chest pain that was recurring. Dr. Sidwell noted upper respiratory infection with coughing, wheezing and drainage. The claimant characterized his cough as chronic at that time but noted that his cough seemed to get worse when he had sinus problems. Dr. Sidwell noted that a recent chest x-ray had shown scarring on the left lower lobe of the lung but nothing on the right side. As of 1992, Dr. Sidwell noted recurrent sinus and upper respiratory infections and that the claimant continued to smoke.

¶ 10 In 1995, Dr. Sidwell treated the claimant on multiple occasions for chronic cough, but noted no shortness of breath, clear lungs, and no chest pain. An x-ray of the sinuses confirmed chronic sinusitis. By 1998, Dr. Sidwell's records made some mention of asthma induced by chronic sinusitis. Upper respiratory infections and/or sinusitis and/or bronchitis is noted at a rate of one to three times per year in Dr. Sidwell's records. In late 2002, the claimant developed pneumonia and was hospitalized for three days. In 2005, due to the claimant's cough, congestion, recurring sinus issues, possible sleep apnea, and slight wheezing, the claimant underwent a pulmonary function test (PFT). That test concluded that the claimant had a "moderately severe ventilatory defect" and noted that the claimant had an elevated Body Mass Index (BMI) at 5 feet and 6 inches tall and weighing 261 pounds.

¶ 11 Following Dr. Sidwell's retirement, Dr. Jon A Wagnon, D.O., became the claimant's family doctor. Dr. Wagnon testified via evidence deposition on August 1, 2012, that he had been treating the claimant for 4 years prior to that date. He testified

that the claimant has some form of reactive airway disease, chronic bronchitis, and CWP, which he attributed to the claimant's employment in the coal mine. He also testified that he would never release the claimant to return to work in the mine. On cross-examination, Dr. Wagnon acknowledged that the claimant is obese and that obesity can cause shortness of breath with exertion.

¶ 12 Several chest x-ray reports and B-reader reports were admitted into evidence. An x-ray dated January 10, 1991, revealed minimal left basilar atelectasis but was otherwise normal. An x-ray from March 13, 1995, noted an acute cardiopulmonary abnormality, pectus excavatum deformity and other minor pleural thickening along the right lateral chest wall. However, a chest x-ray dated December 3, 1998, found no radiographic evidence of pulmonary disease. Chest x-rays from 2002 were consistent with the claimant's hospitalization for pneumonia.

¶ 13 Two B-reader reports were admitted into evidence on behalf of the claimant, and two on behalf of the employer. A B-reader report made by certified B-reader Jonathon Alexander states that the claimant has parenchymal abnormalities that would be indicative of CWP. He noted the presence of opacities in the mid and upper lung zones in a profusion pattern of 1/0. However, he indicated that no large opacities or pleural abnormalities were present. A B-reader report made by certified B-reader Henry Smith concluded that the claimant has simple CWP with small opacities.

¶ 14 Two B-reader reports were admitted into evidence on behalf of the employer. A B-reader report from certified B-reader Robert Tarver indicated a normal chest x-ray, no parenchymal abnormalities consistent with CWP, no pleural abnormalities, and that the

claimant's lungs were clear. A B-reader report from certified B-reader Ralph Shipley also noted no upper zone predominant small or large rounded opacities to suggest CWP.

¶ 15 Finally, the evidence depositions of one independent expert on behalf of each of the parties were admitted into evidence. Dr. Glennon Paul testified on behalf of the claimant. He is the director of respiratory therapy at St. John's Hospital in Springfield and a professor at SIU Medical School. He is also the senior physician at Illinois Allergy and Respiratory Clinic and has been in practice for 32 years. He reads approximately 5,000 chest x-rays per year and treated miners for coal mine induced lung disease in the 1970s and has examined miners for CWP. He testified that he examined the claimant on May 28, 2008, and administered a PFT.

¶ 16 Dr. Paul testified that his physical examination of the claimant's chest was within normal limits. As for the PFT, the results were also within normal limits but there was a 11% fall in the claimant's forced expiratory volume after the inhalation of methacholine. Dr. Paul testified that this indicated some reactivity of the claimant's airways but not enough to be considered asthma. However, Dr. Paul testified that this condition in the claimant's lungs was subject to "wax and wane variability." Dr. Paul opined that this indicated clinically significant pulmonary impairment caused by coal dust. Dr. Paul concluded that, within a reasonable degree of medical certainty, the claimant has CWP caused by coal dust, as well as chronic bronchitis caused by a combination of cigarette smoking and coal dust. His reading of an x-ray of the claimant revealed multiple small nodules throughout all lung fields with some fibrosis, indicating simple CWP complicated by bronchitis. On cross-examination, Dr. Paul acknowledged that shortness

of breath with exertion is characteristic of obesity such as that of the claimant. Also, he is not a B-reader.

¶ 17 Dr. Peter Teuter testified via evidence deposition on February 7, 2013, on behalf of the employer. He is a professor of internal medicine and pulmonary diseases at the Washington University School of Medicine. He is board certified in both of these areas of medicine and regularly reviews chest x-rays, PFTs, and CT scans. He is not a B-reader. He examined the claimant on January 13, 2011. At that time, the claimant reported that he was not undergoing regular treatment for breathing problems and was not on any regular breathing medications. He was 80 pounds overweight, which Dr. Teuter opined can cause shortness of breath with activity. Dr. Teuter's examination of the claimant's chest was normal, as was his chest x-ray. His review of the claimant's PFT showed that it was generally normal, with some reduced forced expiratory volume, which is consistent with the claimant's overweight status. With exercise, there was no change in the forced expiration volume and there was stable oxygen saturation.

¶ 18 Dr. Teuter opined, within a reasonable degree of medical certainty, that the claimant had no indication of exercise induced bronchial narrowing, CWP, or other coal dust related lung disease. In addition, he opined that the claimant did not have chronic bronchitis, COPD, or emphysema and could be gainfully employed as a coal miner. He did note that the claimant had a deviated septum, resulting in some nasal obstruction. On cross-examination, he acknowledged that he did not review the claimant's medical records from his family doctor.

¶ 19 On October 10, 2014, the arbitrator issued a decision finding that the claimant did not sustain an occupational disease arising out of and in the course of his employment and denying the claimant benefits under the Act. In support of his decision, the arbitrator noted that although the claimant testified that he began to experience shortness of breath in the 1990s and that his condition got progressively worse from that time on, the records of the claimant's family physician, Dr. Sidwell, do not support this and there are, in fact, numerous entries in those records where the claimant did not exhibit shortness of breath. In addition, the arbitrator found the opinion of Dr. Teuter more persuasive than that of Dr. Wagnon and Dr. Paul.

¶ 20 The claimant appealed the arbitrator's decision to the Commission. The Commision issued a unanimous decision on June 25, 2015, affirming and adopting the decision of the arbitrator. The claimant then appealed to the circuit court of Macoupin County. The circuit court of Macoupin County entered judgment on March 7, 2016, which confirmed the Commission's decision. The claimant then appealed to this court.

¶ 21 ANALYSIS

¶ 22 In order to recover under the Act, the claimant has the burden of proving that he suffers from a disabling disease and that a causal connection exists between the disease and his employment. *Payne v. Industrial Comm'n*, 61 Ill. 2d 66, 69 (1975). In the present case, the Commission found against the claimant on both of these elements. The Commission found that the claimant failed to prove that he suffered from an occupational disease and that he failed to prove that his current condition of ill-being was causally related to his employment as a coal miner.

¶ 23 The Act defines the term "occupational disease" as a disease "arising out of and in the course of the employment or which has become aggravated or rendered disabling as a result of the exposure of the employment." 820 ILCS 310/1(d) (West 2014). The Commission's finding on the issue of whether a claimant suffered an occupational disease is a factual finding that is reviewed under the manifest weight of the evidence standard. See *Freeman United Coal Mining Co. v. Workers' Compensation Comm'n*, 386 Ill. App. 3d 779, 782-83 (2008). In addition, the question of whether a causal connection exists is one of fact for the Commission to decide, and this determination is also reviewed under the manifest weight of the evidence standard. *Payne*, 61 Ill. 2d at 69; *Freeman United Coal Mining Co.*, 386 Ill. App. 3d at 783. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent." *City of Springfield v. Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 312-13 (2009).

¶ 24 "It is the province of the Commission to judge the credibility of witnesses, draw reasonable inferences from the testimony, and determine the weight to give the testimony." *Freeman United Coal Mining Co. v. Industrial Comm'n*, 286 Ill. App. 3d 1098, 1103 (1997). "When conflicting medical testimony is presented, it is for the Commission to determine which testimony is to be accepted." *Freeman United Coal Mining Co. v. Industrial Comm'n*, 263 Ill. App. 3d 478, 485 (1994). The interpretation of medical testimony is particularly the function of the Commission. *Freeman United Coal Co.*, 286 Ill. App. 3d at 1103. "[A] court will not disregard permissible inferences by the Commission merely because it may have drawn other inferences from the evidence." *Id.*

¶ 25 After reviewing the record on appeal, it is clear that the claimant's medical experts and the employer's medical experts differed in their opinions as to whether the claimant suffered from an occupational disease. As to CWP, the claimant's B-readers, treating physician, and independent expert found simple CWP while the employer's B-readers and independent expert found no evidence of CWP at all. As to other respiratory conditions, the claimant's independent expert opined that the claimant suffered from CWP caused by coal dust and chronic bronchitis caused by cigarette smoke and coal dust. In addition, the claimant's treating doctor, Dr. Wagnon, opined claimant suffered from some form of reactive airway disease, chronic bronchitis and CWP all caused by his employment.

¶ 26 In contrast, the employer's expert, Dr. Teuter, found no evidence of chronic bronchitis, COPD, or emphysema after examining the claimant, administering a PFT, and reviewing his chest x-ray. With regard to the PFT, Dr. Teuter found that any reduced expiratory volume exhibited by the claimant was consistent with his overweight status. In addition, Dr. Teuter found that any sinusitis suffered by the claimant is attributable to a deviated septum. The Commission expressly assigned greater weight to Dr. Teuter's opinion than that of the claimant's experts, which, as explained above, was its province. Accordingly, we cannot find that the Commission's factual finding that the claimant does not suffer from an occupational disease caused by his employment to be against the manifest weight of the evidence because a finding opposite that of the Commissions is not clearly apparent. Accordingly, we must affirm the Commission's finding.

¶ 27 CONCLUSION

¶ 28 For the foregoing reasons, the circuit court's judgment confirming the decision of the Commission to deny benefits to the claimant is affirmed.

¶ 29 Affirmed.