

2017 IL App (5th) 160240WC-U
No. 5-16-0240WC
Order filed June 16, 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
FIFTH DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

WAL-MART STORES, INC.,)	Appeal from the Circuit Court
)	of Madison County.
Appellant,)	
)	
v.)	Nos. 12-MR-62
)	14-MR-281
THE ILLINOIS WORKERS')	
COMPENSATION COMMISSION, <i>et al.</i> ,)	Honorable
)	John Barberis,
(Jason Carlile, Appellee).)	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:* Appellant's failure to provide the reviewing court with a sufficiently complete record on appeal required reviewing court to construe record against appellant and ultimately affirm decision of Commission on remand.

¶ 2 Claimant, Jason Carlile, sought benefits pursuant to the Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 2004)) for injuries he allegedly sustained on March 4, 2005, and December 8, 2006, while working for respondent, Wal-Mart Stores, Inc. Following a hearing,

the arbitrator determined that claimant sustained work-related injuries on both accident dates. The arbitrator further determined that: (1) claimant established causation regarding a low-back strain after the March 4, 2005, accident; (2) the low-back strain fully resolved after limited treatment; (3) claimant lost no time from work after the March 4, 2005, accident; (4) claimant returned to full duty; and (5) the medical bills related to the March 4, 2005, accident had been paid. However, the arbitrator rejected claimant's contention that his current condition of ill-being was causally related to the December 8, 2006, accident. Instead, the arbitrator concluded that claimant's current condition of ill-being was caused by an intervening accident occurring in February 2009 while claimant was deployed in Afghanistan as part of his duties with the Army National Guard. In support of its finding, the arbitrator cited claimant's lack of credibility and noted that the opinions of claimant's treating physicians were entitled to less weight because they were based in part on information provided by claimant. Accordingly, while the arbitrator ordered respondent to pay any outstanding medical bills incurred prior to the intervening accident, he denied claimant's request for temporary total disability (TTD) benefits following claimant's return from deployment and claimant's request for prospective medical treatment.

¶ 3 A majority of the Commission affirmed and adopted the decision of the arbitrator and remanded the matter for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980). On judicial review, the circuit court of Madison County concluded that the Commission's decision that claimant's current condition of ill-being was not causally connected to the work accident of December 8, 2006, "runs contrary to the medical opinions and the medical records and is against the manifest weight of the evidence, even *** giving less weight to [claimant's treating physicians]." The court also concluded that the Commission's finding that there was an intervening event in Afghanistan "is not supported by the medical testimony or

records and is against the manifest weight of the evidence.” As such, the court set aside the decision of the Commission and remanded the matter for “further testing, treatment and benefits based upon the [claimant] having established” a work-related injury. Respondent filed a notice of appeal from the circuit court’s order. This court dismissed that appeal for lack of jurisdiction. See *Wal-Mart Stores, Inc. v. Illinois Workers’ Compensation Comm’n*, No. 5-13-0001WC (2013) (unpublished order under Illinois Supreme Court Rule 23).

¶ 4 On October 3, 2014, the Commission issued its decision on remand. In accordance with the directions of the circuit court, the Commission awarded claimant prospective medical care and 68-5/7 weeks of TTD benefits. In addition, the Commission remanded the matter to the arbitrator for further proceedings pursuant to *Thomas*. On judicial review, the circuit court of Madison County confirmed the decision of the Commission on remand. In upholding the decision of the Commission, the court remarked that its “extensive review of the record” revealed “sufficient evidence, in the form of medical records and testimony, to support the Commission’s findings on remand.” Thereafter, respondent filed a notice of appeal to this court. On appeal, respondent argues that the Commission’s initial findings with respect to causation, prospective medical care, and entitlement to TTD benefits, should be reinstated because they were not against the manifest weight of the evidence.

¶ 5 Where the circuit court sets aside the Commission’s original decision and the Commission enters a new decision on remand, our initial inquiry on appeal from the circuit court order confirming the Commission’s decision on remand is whether the circuit court erred in reversing the Commission’s original decision. *Vogel v. Industrial Comm’n*, 354 Ill. App. 3d 780, 785-86 (2005). If the circuit court properly reversed the Commission’s original decision, then the Commission’s factual findings on remand are given deference. *Inter-City Products Corp. v.*

Industrial Comm'n, 326 Ill. App. 3d 185, 196 (2001). If the circuit court erred in reversing the Commission's original decision, the circuit court's order should be reversed, the Commission's decision on remand vacated, and its original decision reinstated. *Inter-City Products Corp.*, 326 Ill. App. 3d at 196.

¶ 6 Accordingly, our first task is to determine whether the circuit court properly set aside the Commission's initial decision. Unfortunately, our ability to conduct such an inquiry is hampered by an incomplete record. According to the appendix to respondent's brief, the record in this case consists of six volumes containing more than 1,200 pages. However, the record filed on appeal is composed of just three volumes and less than 300 pages. One of those volumes is the circuit court record, the bulk of which consists of the briefs the parties filed with the circuit court following the Commission's decision on remand. The second volume contains the report of proceedings in the circuit court after the Commission's decision on remand. The third volume consists principally of proceedings in the circuit court prior to the remand.¹ As the appellant, it was respondent's duty to provide this court with a sufficiently complete record to address the issues presented on appeal. *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391 (1984). Because the appellant has the duty to provide a complete record on appeal, a reviewing court will resolve any doubts caused by an incomplete record against the appellant. *Foutch*, 99 Ill. 2d at 392.

¹We also note that, in violation of Illinois Supreme Court Rule 342(a) (eff. Jan. 1, 2005), the appendix to respondent's brief does not contain a copy of the judgment appealed from or a copy of the Commission's decision on remand. These documents, however, do appear in the truncated record filed by respondent on appeal.

¶ 7 As noted, this appeal involves a challenge to the Commission's findings with respect to causation, prospective medical care, and entitlement to TTD benefits. All three inquiries present questions of fact. See *ABF Freight System v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 141306WC, ¶ 19 ("Causation presents a question of fact."); *Dye v. Illinois Workers' Compensation Comm'n*, 2012 IL App (3d) 110907WC, ¶ 10 ("Questions regarding entitlement to prospective medical care *** are factual inquiries for the Commission to resolve."); *Ming Auto/Ming of Decatur, Inc. v. Industrial Comm'n*, 387 Ill. App. 3d 244, 256-57 (2008) (noting that entitlement to TTD is a question of fact for the Commission). We review the Commission's findings with respect to factual issues under the manifest-weight-of-the-evidence standard. *Farris v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130767WC, ¶ 68. A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent from the record on appeal. *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315 (2009). Our supreme court has stated that "[a]n issue relating to a circuit court's factual findings and basis for its legal conclusions *** cannot be reviewed absent a report or record of the proceeding." *Corral v. Mervis Industries, Inc.*, 217 Ill. 2d 144, 156 (2005). The same is true with respect to factual findings made by the Commission. *Farris*, 2014 IL App (4th) 130767WC, ¶ 74.

¶ 8 Here, in its original decision, the Commission affirmed and adopted the decision of the arbitrator. The arbitrator rejected claimant's contention that his current condition of ill-being was causally related to the December 8, 2006, accident, concluding instead that that claimant's current condition of ill-being was caused by an intervening accident while claimant was in Afghanistan performing his duties with the Army National Guard. In support of its finding, the arbitrator cited claimant's lack of credibility and noted that the opinions of claimant's treating

physicians were entitled to less weight because they were based in part on information provided by claimant. Based on this determination, the arbitrator also denied claimant's request for TTD benefits following his return from deployment and his request for prospective medical care. Yet, the record does not include any evidence taken at the arbitration hearing, including claimant's testimony or any of claimant's medical records. As noted, a reviewing court will resolve any doubts caused by an incomplete record against the appellant. *Foutch*, 99 Ill. 2d at 392.² Hence, we must presume that the circuit court properly reversed the Commission's original decision and give deference to the Commission's factual findings on remand. *Inter-City Products Corp.*, 326 Ill. App. 3d at 196. As such, we are compelled to affirm the judgment of the circuit court, which confirmed the decision of the Commission on remand.³

²The *Foutch* court also stated that, in the absence of the record on appeal, "it will be presumed that the order entered by the trial court was in conformity with the law and had a sufficient factual basis." *Foutch*, 99 Ill. 2d at 391-92. We recently extended this concept to decisions rendered by the Commission. *Farris*, 2014 IL App (4th) 130767WC, ¶ 73. Nevertheless, we decline to hold that the Commission's original decision in this case had a sufficient factual basis as doing so would ignore the supreme court's additional admonishment that any doubts caused by an incomplete record must be resolved against the appellant. *Foutch*, 99 Ill. 2d at 392.

³During oral argument, respondent's attorney moved to supplement the record on appeal. We took the motion under advisement. We now deny the motion.

¶ 9 For the foregoing reasons, we affirm the judgment of the circuit court of Madison County, which confirmed the decision of the Commission on remand. This matter is remanded to the Commission for further proceedings in accordance with *Thomas*, 78 Ill. 2d 327.

¶ 10 Affirmed and remanded.