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2018 IL App (4th) 170619WC-U

Order filed October 2, 2018

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

MARK JOHNS,	)	Appeal from the Circuit Court
	)	of the Seventh Judicial Circuit,
	)	Sangamon County, Illinois
	)	
Appellant,	)	
	)	
v.	)	Appeal No. 4-17-0619WC
	)	Circuit No. 16-MR-1068
	)	
ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION, *et al.*, (Freeman United Coal	)	John Schmidt,
Mining Co., Appellees).	)	Judge, Presiding.

PRESIDING JUSTICE HOLDRDIGE delivered the judgment of the court.
Justices Hoffman, Hudson, Cavanagh, and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: The Commission's decision that the claimant failed to prove he suffered from an occupational disease was not against the manifest weight of the evidence.

¶ 2 The claimant, Mark Johns, appeals a decision of the Illinois Workers' Compensation Commission (Commission) denying his claim for benefits under the Illinois Workers' Occupational Diseases Act (Act) (820 ILCS 310/1 *et seq.* (West 2010)). The Commission found that the claimant failed to prove he suffered from an occupational disease. The Commission's decision affirmed and adopted the decision of the Arbitrator, who found that the preponderance

of the medical evidence and opinion testimony failed to establish that the claimant suffered from an occupational disease. The claimant sought judicial review of the Commission's decision in the circuit court of Sangamon County. The circuit court confirmed the Commission's decision, finding that it was not against the manifest weight of the evidence.

¶ 3 The sole issue on appeal is whether the Commission's finding that the claimant failed to prove that he suffered from an occupational disease related to his coal mining employment was against the manifest weight of the evidence.

¶ 4 BACKGROUND

¶ 5 The following factual recitation is taken from the evidence presented at the arbitration hearing held before Arbitrator Molly Dearing in Springfield, Illinois, on March 25, 2015.

¶ 6 The claimant began mining coal on July 26, 1979, for the Freeman United Coal Mining Co. (Employer) at its Crown IV mine in Pittsburg, Illinois. The claimant performed a variety of job tasks, including rebuilding stoppings, roof bolting, rock dusting, welding, and driving a shuttle car from the continuous miner to the belt to transfer the coal out of the mine. He testified that he was continuously exposed to coal dust, rock dust, and diesel fumes for the duration of his coal mining career. The claimant worked at the Crown IV mine until May 15, 1987, when the mine closed. The claimant further testified that he initially noticed breathing difficulties and shortness of breath in 1985. The claimant acknowledged that he chewed tobacco in lieu of smoking until the mine closed in 1987, at which time he resumed smoking cigarettes. After the closure of the Crown IV mine, the claimant worked at a dairy loading milk crates in semi-trucks for one year, then worked for seven years in a mailroom. He drove a 10-wheel truck before he resumed his mining career with the employer in 2001.

¶ 7 The claimant testified that he worked at the employer's Crown III mine, performing the

same job tasks of his previous employment. He testified that he was regularly exposed to coal and rock dust from 2001 to 2007 while working at the Crown III mine. He further testified that when he resumed coal mining in 2001, he again experienced breathing difficulties and shortness of breath, which continued until he separated from his employment in 2008. He acknowledged that his breathing difficulties during this time were possibly related to his weight at that time, as he testified he weighed 387 pounds when the mine closed. The claimant worked at the Crown III mine until June 29, 2007. He testified, that on that date, he was exposed to coal dust. The claimant testified that the next day he awoke and was unable to straighten or bend his knees. He testified that he was not physically able to return to his employment due to his bilateral knee condition and he has not worked anywhere since that date. The claimant voluntarily terminated his employment with the employer on June 15, 2008. His termination notice reflects his last date of work as June 29, 2007. The claimant filed a group insurance claim on that date reporting that he was unable to work beginning June 30, 2007 due to severe pain in his knees and hip. At that time, the claimant began receiving accident and sickness benefits from the mine. In 2008, the claimant applied for and received Social Security Disability benefits.

¶ 8 The claimant's Social Security Disability file was admitted into evidence. In his application, the claimant reported that the illnesses, injuries or conditions that limited his ability to work included knee replacement, rheumatoid arthritis, problems with his left ankle, diabetes, and high blood pressure. He stated that he was unable to work because of these conditions on and after July 1, 2007. The claimant was awarded disability benefits dating back to July 1, 2007. The primary diagnosis for the determination of disability was osteoarthrosis and allied disorders, with a secondary diagnosis of muscle, ligament and fascia disorders.

¶ 9 The claimant testified that his breathing difficulties gradually improved after he left coal

mining in 2007, but he continued to have breathing difficulties with certain activities. He testified that vigorous activities caused him to become light-headed and short of breath and that walking sixty feet or ascending six or seven stairs would cause him stop due to shortness of breath and bilateral knee pain. He testified that he could no longer perform various physical tasks without the need to take frequent breaks. He further testified that he smoked a half of a pack of cigarettes per day and he had smoked since he was twenty-two years of age. The claimant testified that, at the time of the arbitration hearing, he was taking medication for diabetes but was not utilizing any breathing medications.

¶ 10 The record contains that depositions and medical treatment notes of no less than nine physicians. The following is a summary of the medical evidence.

¶ 11 Dr. Kevin Oestmann testified that he was the claimant's treating physician since at least 1999. Dr. Oestmann testified by deposition on May 29, 2014. Dr. Oestmann is board certified in family practice at Logan Primary Care in Herrin, Illinois. He treats general medical problems and he occasionally treats coal miners or former coal miners. Dr. Oestmann, in response to correspondence from the claimant's counsel dated March 27, 2014, opined that the claimant has coal workers' pneumoconiosis (CWP) caused by his work as a coal miner. Dr. Oestmann further opined that the claimant has lung function impairment as a result of CWP. He also opined that the claimant has chronic bronchitis, occupational asthma and sinusitis, each caused or aggravated by his exposures as a coal miner. Dr. Oestmann testified that the entries in his records of coughing, acute bronchitis and bronchospasms also caused or aggravated by his exposures as a coal miner. Dr. Oestmann testified, that due to the claimant's CWP, sinusitis, bronchitis and asthma, any further exposure to the environment of a coal mine would present a risk to his health in the form of an increased potential for progression or worsening of those conditions. Dr.

Oestmann opined, that in light of his diagnoses, symptoms and complaints, as well as his clinical presentation, the claimant no longer has the pulmonary capacity to work as a coal miner. Dr. Oestmann acknowledged that he is not an expert in the diagnosis of CWP, but he assumed such a diagnosis was based on chest x-ray and pulmonary function tests. Dr. Oestmann further acknowledged that he did not have a chest x-ray report in his records showing positive for CWP, and he also acknowledged that he did not order any pulmonary function tests. Dr. Oestmann's treatment notes do not contain a diagnosis of occupational asthma. His notes did contain a diagnosis of bronchitis on February 14, 2000, as well as a single diagnosis of bronchospasm and sinusitis on one examination.

¶ 12 Dr. Suhail Istanbouly evaluated the claimant on November 4, 2013, and November 18, 2013. Dr. Istanbouly testified by deposition that he is a physician specializing in pulmonology and critical care medicine. He is board certified in internal medicine, pulmonary medicine and critical care medicine. He testified that he regularly performs all of the duties of a pulmonologist, including interpreting x-rays, reading pulmonary function tests, performing physical examinations of the chest, and taking patient histories. Dr. Istanbouly testified that the claimant was morbidly obese when he saw him and gave a history of significant smoking history. Dr. Istanbouly testified that a history of smoking could be associated with the development of a pulmonary obstruction, cough, and shortness of breath during physical exertion. Dr. Istanbouly testified that he would expect that the claimant's symptoms would progress if he continued to smoke. Dr. Istanbouly diagnosed CWP, chronic bronchitis, chronic obstructive pulmonary disease (COPD), all causally related to the claimant's exposures as a coal miner. Dr. Istanbouly testified that a September 11, 2012, chest x-ray revealed mild chronic interstitial changes, according to the radiologist's interpretation, which Dr. Istanbouly related to CWP. Dr. Istanbouly

testified that pulmonary function tests he performed showed severe non-specific ventilatory limitation and reflected severe lung damage, for which he opined CWP was a contributing factor. Dr. Istanbouly opined that the claimant has clinically significant pulmonary impairment as evidenced by his symptoms, complaints and physical findings. Dr. Istanbouly testified that the claimant's COPD and CWP contributed to his respiratory symptoms. Dr. Istanbouly further opined that the claimant did not have the pulmonary capacity to perform the manual labor of a coal miner and that he was disabled due at least in part to his coal dust exposure. Dr. Istanbouly acknowledged that he was unable to distinguish nodules on a chest x-ray as being due to coal dust versus granuloma unrelated to coal dust by looking at the chest x-ray alone, and he was unable to ascertain the profusion of the films he reviewed, though he opined that the claimant's pneumoconiosis was mild.

¶ 13 On February 4, 2009, the claimant was evaluated by Dr. Dani Tazbaz, who testified by way of evidence deposition on August 27, 2012. Dr. Tazbaz is board certified in internal medicine, pulmonary disease and critical care medicine. He testified that he gained significant experience diagnosing CWP while working for the U.S. Department of Labor. In that capacity, he testified that he gained specific experience in radiographic studies for occupational lung diseases and in performing pulmonary function testing on current and former coal mine employees. The claimant gave Dr. Tazbaz a history of coughing greater than ten times per day and wheezing primarily with exertion. He reported the use of an inhaler prescribed by Dr. Oestmann. The claimant also gave a history of smoking a pack of cigarettes per day, which Dr. Tazbaz testified could cause a persistent cough and wheezing and is generally associated with COPD. Dr. Tazbaz noted the claimant's chest was normal and his pulmonary function testing revealed moderate reduction in FVC and FEV1 with a normal FEV1/FVC ratio. The claimant's

lung volumes were within normal range. Dr. Tazbaz opined that the claimant's spirometry testing failed to reveal any obstructive defect or restriction. Dr. Tazbaz further testified that a low FVC and FEV1 with a normal ratio could indicate some non-specific ventilator defect that is sometimes present in patients who are obese or have a neurologic problem. Dr. Tazbaz reviewed a chest x-ray dated February 4, 2009, which he interpreted as revealing some calcified granulomas related to an old viral infection. Dr. Tazbaz opined that the claimant's cough could be due to CWP, granulomatous disease, sleep apnea, or smoking. He further testified that he did not diagnose chronic bronchitis, but he could not rule it out either.

¶ 14 Dr. Tazbaz testified that CWP is generally considered to be an x-ray reading diagnosis. He noted that a coal miner with radiographically significant CWP may still have normal pulmonary function test results, normal blood gases, normal physical examinations of the chest, and can be completely asymptomatic. Dr. Tazbaz testified, that by definition, a coal miner with CWP would have impairment in the area of his lung at the site of the scarring regardless of whether it can be measured. He explained that CWP generally presents initially in the upper lung zones. In the claimant's case, Dr. Tazbaz could not recall what type of opacities were present or where they were located in the lungs. Dr. Tazbaz testified that he formulates his own opinions concerning the presence of pulmonary processes, but defers to a board certified radiologist's interpretation of the films when rendering a formal opinion. Dr. Tazbaz testified that the claimant never returned to see him, though he spoke to the claimant by phone on February 6, 2009, regarding the results of his chest x-ray and breathing tests.

¶ 15 Dr. Douglas Fulk, a board certified radiologist and B-reader, interpreted the claimant's x-ray dated February 4, 2009, as revealing small pulmonary granuloma nodules. He read the film as negative for CWP. The record established that Dr. Fulk read the claimant's films at the request

of Dr. Tazbaz.

¶ 16 Dr. Henry K. Smith, board certified radiologist and certified B-reader, interpreted the claimant's chest x-ray dated January 14, 2008, as positive for CWP with P/S opacities in all lung zones, profusion 1/1. Dr. Smith made an identical interpretation of the claimant's chest x-rays dated February 4, 2009, and February 12, 2010, and additionally noted small old granulomas in the lateral left upper lung.

¶ 17 Dr. Michael Alexander, board certified radiologist and certified B-reader, interpreted the claimant's chest x-ray dated January 14, 2008, as positive for CWP with P/P opacities in all lung zones, profusion 1/2. Dr. Alexander noted a small calcified granuloma in the left upper lung zone. He made an identical interpretation of the claimant's chest x-ray dated February 12, 2010.

¶ 18 At the request of employer, Dr. Cristopher A. Meyer interpreted the claimant's chest films and testified by way of evidence deposition on September 30, 2011. Dr. Meyer has been board certified in radiology since 1992 and a B-reader since 1999. Dr. Meyer reviewed the claimant's films of January 14, 2008, February 4, 2009, and February 12, 2010. He opined that the films were of diagnostic quality. Dr. Meyer noted the presence of a single calcified granuloma in the left upper zone, but otherwise, the films were normal. Dr. Meyer found no radiographic findings consistent with CWP.

¶ 19 At the request of the employer, Dr. David Rosenberg reviewed the claimant's medical records and films. Dr. Rosenberg testified by deposition that he is board certified in pulmonary disease, internal medicine and occupational medicine. Dr. Rosenberg has been a B-reader since July 2000. His treatment practice concentrates on patients with CWP. Dr. Rosenberg interpreted the claimant's chest x-rays dated January 14, 2008, February 4, 2009, and February 12, 2010. He testified that all studies were considered 0/0 with the presence of granulomatous changes and he

opined that the films did not reveal the presence of CWP. Dr. Rosenberg concurred with Dr. Tazbaz's opinion that the claimant had a non-specific entry defect with air trapping, which he testified is consistent with and can be explained by the claimant's significant history of tobacco use. Dr. Rosenberg testified that based upon the claimant's spirometry testing, there was no pulmonary obstruction present. Dr. Rosenberg testified that a significant smoking history is generally associated with cough, sputum, shortness of breath, chronic upper respiratory infections, and acute bronchitis. He further opined that those symptoms are progressive in an individual, such as the claimant, who continues with the habit. Dr. Rosenberg acknowledged that the environment of a coal mine could cause and aggravate chronic bronchitis, sinusitis or rhinitis. He testified, however, that based on his review of the records, the claimant did not appear to have chronic or acute sinusitis, or rhinitis. He further noted that the claimant's medical records did not demonstrate that any chronic respiratory conditions persisted after he left the coal mine.

¶ 20 Dr. Rosenberg further testified that his review of the records and films revealed that the claimant had a long smoking history throughout his adult life and had a history of massive obesity with diabetes, hypertension and various arthritic problems. The chest x-rays did not reveal micronodularity related to past coal mine dust exposure, and his pulmonary function tests did not demonstrate any restriction. Dr. Rosenberg also noted that the pulmonary function tests revealed a symmetrical reduction of FVC and FEV1 ration predominantly related to obesity. Dr. Rosenberg also observed granulomatous related to viral infections and unrelated to past coal mine dust exposure. Dr. Rosenberg opined that, while the claimant had some respiratory impairment, it was related to his obesity and smoking.

¶ 21 The Arbitrator weighed that competing medical testimony and determined that the claimant had failed to prove, by a preponderance of the evidence, that he had an occupational

disease arising out of and in the course of his employment.

¶ 22 The Arbitrator found the B-reading interpretations and opinions of Drs. Meyer and Rosenberg more persuasive that the B-reading interpretations of Drs. Smith and Alexander. The Arbitrator noted that Drs. Smith, Alexander, Meyer, Rosenberg, and Fulk all found evidence of granuloma in the claimant's x-rays, although Drs. Smith and Alexander interpreted the x-rays as also revealing the presence of CWP. The Arbitrator gave great weight to Dr. Fulk's interpretation of the x-ray of February 4, 2009, as revealing viral granulomas, but no CWP. The Arbitrator noted that Dr. Fulk was not directly retained by either party, which, among other factors gave his opinion additional weight. The Arbitrator noted that the interpretations and opinions of Drs. Meyer and Rosenberg were consistent with that of Dr. Fulk, thus giving greater weight to their interpretations of the claimant's films. The Arbitrator also noted that, while Dr. Tazbaz opined that the claimant's film of February 4, 2009, might show CWP, he was unable to ascertain what opacities were present or their location in the lungs; was unable to assign a profusion rate to the alleged CWP; and deferred to a board certified radiologist for a final opinion. The Arbitrator similarly discounted the opinion of Dr. Istanbouly since he conceded that he was unable to distinguish the nodules present on the relevant x-rays as being resultant from coal dust or merely granuloma unrelated to coal dust exposure. This contrasted with Dr. Rosenberg's opinion that evidence of past granulomatous were related to a prior granulomatous-type infection and were not related to any coal mine exposure. Additionally, the Arbitrator noted that, while Dr. Oestmann diagnosed CWP, that opinion was entitled to little weight, given that he acknowledged he did not review any film that was positive for CWP, nor did he rely upon any functional testing.

¶ 23 The Arbitrator also determined that the claimant failed to prove by a preponderance of

the evidence that he had COPD, asthma, hyperactivity, chronic bronchitis, bronchospasm, or sinusitis causally related to exposures resulting from his coal mine employment. In so concluding, the Arbitrator found the claimant's testimony that his symptomatology improved following his separation from the coal mine in 2007, undermined the suggestion of a causal relationship between his current condition and his employment, and instead demonstrated that his significant history of smoking and/or his co-morbid factors were solely causative of present complaints. The Arbitrator found the opinions of Dr. Rosenberg and Dr. Istanbouly regarding the claimant's smoking history and general ill health as sole causative factors for the claimant's respiratory symptoms to be persuasive. Additionally, the Arbitrator noted that Dr. Oestmann did not diagnose the claimant with asthma during his care and treatment of him, and he diagnosed a single episode of bronchospasm only on one occasion. The Arbitrator further noted that Dr. Tazbaz did not diagnose chronic or acute bronchitis when he examined the claimant in 2009, approximately two years after claimant left coal mining. The Arbitrator also noted that the claimant first diagnosed with COPD by Dr. Istanbouly only in 2013. The Arbitrator noted that the temporal disparity of six years between his cessation of exposure in 2007 and his examination with Dr. Istanbouly in 2013 completely negated the assertion of any causal relationship between the claimant's current condition of ill-being and his employment.

¶ 24 The claimant appealed the Arbitrator's decision to the Commission, which unanimously affirmed and adopted the Arbitrator's decision. The claimant then sought judicial review of the Commission's decision in the circuit court of Sangamon County, which confirmed the Commission's ruling. The claimant then filed this timely appeal.

¶ 25 ANALYSIS

¶ 26 On appeal, the claimant argues that the Commission's findings that he failed to establish

that he suffered from an occupational disease arising out of and in the course of his employment and failed to establish that he suffered a disablement as a result of his condition were both against the manifest weight of the evidence. He maintains that the evidence clearly established that he was diagnosed with CWP, and that once a diagnosis of CWP is established, both causation and disablement are proven by the diagnosis. *Freeman United Coal Mining Co. v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120564WC.

¶ 27 The employer maintains, to the contrary, that the Commission merely weighed competing medical evidence and opinion testimony, rejected the diagnosis of occupational disease and found one set of experts more credible than the others. *Hicks v. Industrial Comm'n*, 251 Ill. App. 3d 320, 326 (1993).

¶ 28 The claimant in an occupational disease case has the burden of proving both that he suffers from an occupational disease and that a causal connection exists between the disease and his employment. *Anderson v. Industrial Comm'n*, 321 Ill. App. 3d 463, 467 (2001). Whether an employee suffers from an occupational disease and whether there is a causal connection between the disease and the employment are questions of fact. *Bernardoni v. Industrial Comm'n*, 362 Ill. App. 3d 582, 597 (2005); *Anderson*, 321 Ill. App. 3d at 467. Likewise, whether a claimant has established disablement or impairment is a question of fact for the Commission to determine, and its determination will not be overturned unless it is against the manifest weight of the evidence. *Forsythe v. Industrial Comm'n*, 263 Ill. App. 3d 463, 469 (1994); *Plasters v. Industrial Comm'n*, 246 Ill. App. 3d 1, 8 (1993). It is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *Hosteny v. Illinois Worker's Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). The Commission's determination on a question of fact will not be disturbed on review unless it is against the

manifest weight of the evidence. *Docksteiner v. Industrial Comm'n*, 346 Ill. App. 3d 851, 856-57 (2004). For a finding to be contrary to the manifest weight of the evidence, the opposite conclusion must be clearly apparent. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 539 (2007).

¶ 29 Here, the Commission's finding that the claimant did not suffer from CWP rests firmly upon the opinions of Drs. Meyer, Rosenberg, and the supporting opinion of Dr. Fulk. That evidence was far from unchallenged. The claimant's medical experts, Drs. Smith, and Alexander, and the claimant's treating physician, Dr. Tazbaz, all opined to an equal degree of medical certainty that the claimant suffered from CWP related to his employment. The weight to be accorded medical opinion testimony is not simply a matter of tallying up the number of experts or weighing their credentials. These experts have given opinions regarding CWP on numerous occasions, and all are recognized as qualified to give such opinions.

¶ 30 Regarding the weight accorded the conflicting medical opinions in this matter, the Commission adopted the reasoning and rationale of the Arbitrator, who articulated specific reasons for weighing the conflicting evidence in the manner stated. The Arbitrator articulated sound reasons for giving greater or lesser weight to each opinion and after reviewing the record, we cannot say that the Commission's findings were against the manifest weight of the evidence. In the final analysis, unless the evidence on one side is so compelling as to render the opposite conclusion clearly apparent, we must defer to the Commission, which is uniquely situated to weigh competing medical evidence and to resolve any evidentiary conflicts. *Steak 'n Shake v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3rd) 150500WC, ¶ 43. Here, it simply cannot be said that the conclusion opposite that reached by the Commission is clearly apparent. Rather, the evidence was, in many ways, evenly balanced, making the Commission the ultimate

decision maker. The Commission's finding that the claimant did not establish that he suffered from an occupational disease was not against the manifest weight of the evidence.

¶ 31 CONCLUSION

¶ 32 The judgment of the circuit court of Sangamon County, which confirmed the decision of the Commission is affirmed.

¶ 33 Affirmed.