2018 IL App (5th) 170454WC-U

No. 5-17-0454WC

Order filed: October 3, 2018

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

RHONDA NICHOLS,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	St. Clair County.
	)	
v.	)	No. 15-MR-100
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION *et al.*	)	Honorable
	)	Stephen P. McGlynn,
(Cahokia School District #187, Appellee).	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: The Commission's decision that the claimant failed to show by sufficient credible evidence that her acute respiratory ailments were causally related to her workplace environment and thereby arose out of and in the course of her employment was not against the manifest weight of the evidence.

¶ 2 The claimant, Rhonda Nichols, appeals from an order of the circuit court of St. Clair County confirming a decision of the Illinois Workers' Compensation Commission (Commission) finding that she had failed to prove an injury arising out of and in the course of her employment with the respondent, Cahokia School District #187 (CSD).

¶ 3 I. Background

¶ 4 On May 20, 2009, the claimant filed an application for adjustment of claim seeking benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)) alleging that she suffered from acute respiratory ailments due to an alleged workplace exposure while working for CSD on September 26, 2008. An arbitration hearing was held on November 21, 2013, where the following evidence was presented.

¶ 5 The claimant started working for CSD as a part-time library aide in 1997. She testified that she usually worked 15 to 20 hours per week but had the summer months off from mid-June to mid-August. The claimant's job duties consisted of assisting students with book rentals, reading stories to younger children, and presenting films.

¶ 6 The claimant testified that she first experienced "allergy problems," specifically, sneezing, coughing, and labored breathing, in 2006 or 2007. The claimant alleged that she had increased respiratory ailments due to the dusty, dirty, and moldy condition of the library**.**

¶ 7 In November 2007, the claimant presented to Memorial Hospital for pulmonary functioning testing and alleged occupational exposure to asbestos. No restrictive or obstructive abnormalities were observed at that time. On February 3, 2008, the claimant was admitted to Memorial Hospital following her first major breathing attack,

complaining of chest pain, shortness of breath, cough, and blood-streaked sputum. The claimant stated that there was "so much dirt in that carpet, it was just exposure that I was constantly *** being exposed to *** every day when I came to work. And it just took a toll on my health. I had an attack one night. My husband had to rush me to the hospital. I could hardly breathe."

¶ 8 During the claimant's five-day admission, her x-rays and lung scans showed to be normal and unremarkable, with no cardiac or pulmonary concerns. Moreover, hospital records demonstrated that the claimant was diagnosed with acute bronchitis, rhinitis, hemoptysis, anemia, diabetes, and morbid obesity. According to the claimant, she had informed her treating physicians, Dr. Kashif Bhutto, a pulmonologist, and Dr. Jawad Khan, a family practitioner, that her condition was related to her previous work environment. The hospital records, however, are void of any such notations. Following discharge, the claimant continued treatment with Drs. Bhutto and Khan and reported respiratory problems and sleep apnea. Dr. Bhutto recommended sleep apnea testing.

¶ 9 On April 17, 2008, according to Dr. Khan's notes, the claimant reported that she had been exposed to smoke inhalation during a fire in her home. As a result, she suffered nasal bleeding, sneezing, a sore throat, and blood in her spit. The claimant testified, however, that she had not been exposed to smoke because she was not in her home at the time of the fire.

¶ 10 In the summer of 2008, medical records revealed that the claimant reported a productive cough and a mild cardiomegaly (*i.e.*, an enlargement of the heart), but no pulmonary abnormality or lung infiltrates were observed. Once again, Dr. Bhutto

recommended sleep apnea testing. Following the summer of 2008, CSD informed the claimant that the library renovation had been completed on August 13, 2008, and advised the claimant to return to work or face disciplinary action.

¶ 11 On August 18, 2008, the claimant requested Dr. Bhutto to write a letter informing CSD that the claimant was to avoid exposure to dust. Dr. Bhutto stated that "due to [the claimant's] medical condition it is preferable to avoid dust exposure if possible." The claimant testified that after she returned to work, her respiratory symptoms increased immediately because dust was "everywhere" and that the dust was "inches high" on her desk, which caused her to wear a dust mask.

¶ 12 On September 2, 2008, approximately two weeks after the claimant returned to work, she presented to Dr. Bhutto with a residual dry cough and a decrease in respiratory symptoms. Dr. Bhutto noted that the claimant had a recent episode of acute bronchitis, clinically improved. No work-related concerns were expressed, and the claimant, once again, expressed her desire to undergo sleep apnea testing.

¶ 13 On September 22, 2008, the claimant presented to Dr. Patrick Win, an allergist-immunologist, and reported a "long-standing history of multiple upper airway symptoms involving the nose and eyes." The claimant described symptoms consistent with sleep apnea and a history of recurrent bronchitis. The claimant sought "potential answers for multiple upper respiratory tract symptoms and questions whether or not her current work environment is contributing to her symptoms." Dr. Win noted nasal congestion and itching, postnasal drip, and congestion. However, since the claimant's lungs were clear without wheezes or crackles, Dr. Win ruled out asthma.

¶ 14 Dr. Win diagnosed the claimant with allergic rhinitis after tests showed allergies to various trees, grasses, weeds, and molds. Dr. Win recommended that the claimant avoid known allergens and use various medications and inhalers for symptom control because she "ha[d] a history of intermittent wheezing that is related to viral infections." Dr. Win indicated that the recent remodeling in the library was an occupational exposure based on the claimant's assertion that her workplace was very dusty.

¶ 15 On September 26, 2008, the claimant was suspended from work for "gross insubordination." Shortly thereafter, CSD retained Environmental Consultants, L.L.C., to perform an air quality study of the library, which demonstrated compliance within EPA standards. Fungal spore testing was first conducted in the library and hallway and then compared to the outdoors. The test revealed that, while some Penicillium and Aspergillus were identified in the library, overall fungal concentrations were reduced indoors as compared to outdoors. The study concluded that the concentration of spores inside the library "d[id] not appear significant enough as expected with a potential microbial growth within these areas."

¶ 16 On November 10, 2008, following a disciplinary hearing, CSD terminated the claimant for gross insubordination, failing to return to work when instructed and poor job performance. Although the claimant testified that she was unaware of why she was terminated, she had been notified by CSD via letter that her termination was based on gross insubordination. The claimant did not return to work and did not look for alternative employment following termination.

¶ 17 On December l, 2008, the claimant presented to Memorial Hospital complaining of a bloody cough. She reported a history of productive cough over the previous week. She also reported that a previous CT scan had been negative for pulmonary processes and that she had been diagnosed with acute bronchitis. Additionally, no substantial pathology changes were uncovered and testing demonstrated no change in her condition since prior testing.

¶ 18 The claimant later underwent a methacholine challenge test where no evidence of reactive airway disease was observed. Dr. Win noted that the claimant had reported respiratory symptoms "if she doesn't take her medications" and that the claimant "is extremely noncompliant with medications and takes them irregularly." In a subsequent opinion letter, Dr. Win stated that he had not received a report of allergen levels and was relying on the claimant's description of the workplace environment. He further stated that, while exposure to allergens can provoke symptoms in an allergic individual, he "cannot verify that her environment 'caused' her respiratory problems" considering that "the origins of the disease and when they first developed cannot be proven." Dr. Win did not place specific work restrictions on the claimant.

¶ 19 On April 2, 2009, Dr. Bhutto indicated that the methacholine challenge test was unremarkable, as was earlier bronchoscopies. Dr. Bhutto stated that the claimant "does not have any evidence of reactive airway disease or asthma." The claimant continued to treat with Dr. Bhutto for periodic bronchitis and shortness of breath for the remainder of 2009.

¶ 20 On January 23, 2012, the claimant underwent a section 12 evaluation with Dr. Thomas Hyers, a pathologist, at CSD's request. In conducting the evaluation, Dr. Hyers interviewed the claimant and her husband, Calvert Nichols (Calvert), where they both voiced concerns over the claimant's alleged exposure to asbestos. Dr. Hyers observed that the overall dust sampling was within EPA guidelines and that the indoor mold sampling was below outdoor levels. Even though there was a slight elevation of mold in the library and hallway, the molds were "not live, growing molds."

¶ 21 Dr. Hyers also noted normal lung functioning, normal spirometry results, and no evidence of airway obstruction. Dr. Hyers diagnosed the claimant with allergic rhinitis and, possibly, mild asthma. Dr. Hyers opined that the claimant had a chronic condition capable of being provoked by routine environmental triggers common to any work or non-work environment, although aggravation would have been temporary in nature. Moreover, given that the claimant had not worked at CSD for several years, he concluded that her health problems were non-work-related in origin.

¶ 22 Dr. Hyers testified that the claimant was highly allergic to a variety of triggers. In his opinion, he would expect an individual like the claimant to suffer symptoms "just by walking out in public areas." He noted that the claimant was very sensitive to allergens and would likely suffer symptoms in "any environment, including work."

¶ 23 Calvert, the claimant's husband, testified to the following. Calvert noticed that the claimant's breathing problems had worsened in February 2008. On one occasion when Calvert visited the claimant at work, she showed him an area in the library with wet carpet and rotting wood. In August 2008, Calvert observed "a lot of dust and debris"

because the area had not been cleaned up following the renovation. According to Calvert, the claimant's breathing problems "didn't stop right away, but it eventually stopped" following her termination.

¶ 24 On January 22, 2014, the arbitrator entered his decision finding that the claimant had failed to prove an injury arising out of and in the course of her employment. In particular, the arbitrator observed that the claimant's responses during questioning were "self-serving, occasionally belligerent, overly dramatic and prone to exaggeration." In support, the arbitrator noted that the claimant had exaggerated the amount of dust after the renovations had been completed when she testified that it was "inches thick." The claimant also denied exposure to smoke inhalation even though her exposure had been noted by her treating physician. Overall, the arbitrator determined that the claimant's testimony lacked both "candor and credibility," which, in turn, directly impacted her ability to meet her burden of proof.

¶ 25 Next, the arbitrator addressed the claimant's assertion of acute respiratory ailments, finding that the medical history did not provide any evidence of lung or respiratory injury. Even though the claimant asserted that her symptoms started in 2006 or 2007, medical records only dated back to November 2007. At that time, the claimant was concerned with possible exposure to asbestos; however, no evidence supported this claim. The arbitrator also noted that Dr. Bhutto had testified that the claimant demonstrated a decrease in respiratory symptoms during the September 2, 2008, visit, with no work relationship noted. Additionally, the claimant had ongoing complaints

during the summer months, which, in the arbitrator's view, weakened her argument that work had provoked her symptoms.

¶ 26 Moreover, the arbitrator addressed the discrepancies in the medical experts' testimonies. The arbitrator found Dr. Hyers' assessment and testimony to be substantially credible regarding the likelihood that the claimant's condition was an inherited condition that could be triggered in any work, social, private, or public arena. In contrast, the arbitrator characterized Dr. Win's testimony as "patient advocacy," although his medical notes demonstrated skepticism when he acknowledged that he could not verify that the claimant's environment had caused her respiratory problems. The arbitrator acknowledged that although the claimant had allergies to plants, dust, mold, and animals, her allergies were not created or worsened by her employment. As such, the arbitrator concluded that the claimant had failed to prove her injury arose out of and in the course of her employment.

¶ 27 On review, the Commission unanimously adopted and affirmed the arbitrator's decision. Shortly thereafter, the claimant sought judicial review of the Commission's decision in the circuit court of St. Clair County, claiming that the Commission's decision was against the manifest weight of the evidence. The court confirmed the Commission's decision, finding that the evidence was sufficient and "the record does not suggest a decision opposite of the decision reached by the Comm[ission] to be clearly required." This appeal followed.

¶ 28 II. Analysis

¶ 29 The claimant contends that the Commission's decision that she had failed to prove she suffered from acute respiratory ailments due to workplace exposure arising out of and in the course of her employment was against the manifest weight of the evidence. In general, the claimant argues that the Commission failed to properly consider "all *** evidence contained in an environmental report prepared by [CSD]."

¶ 30 An employee's injury is compensable under the Act only if it "arises out of" and "in the course of" employment. *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910 (2006); *O'Fallon School District No. 90 v. Industrial Comm'n*, 313 Ill. App. 3d 413, 416 (2000). A claimant has the burden of proving by a preponderance of credible evidence all elements of the claim, which includes an alleged injury arising out of and in the course of employment. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44-45 (1987).

¶ 31 For an injury to "arise out of" one's employment, its origin must be in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 58 (1989). The phrase "in the course of" refers to the time, place, and circumstances of the injury. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 162 (2000). Injuries sustained on an employer's premises, or at a place where the employee might reasonably have been while performing his or her duties, and while the employee is at work, are generally deemed to have been received "in the course of" one's employment. *Metropolitan Water Reclamation District*

of Greater Chicago v. Illinois Workers' Compensation Comm'n, 407 Ill. App. 3d 1010, 1013-14 (2011).

¶ 32 The applicable standard of review is whether the Commission's decision is supported by the manifest weight of the evidence. *Edgcomb v. Industrial Comm'n*, 181 Ill. App. 3d 398, 403 (1989). Thus, the determination of whether an injury arose out of and in the course of one's employment is a question of fact for the Commission which will not be disturbed unless it is against the manifest weight of the evidence. *Brais v. Illinois Workers' Compensation Comm'n*, 2014 IL App (3d) 120820WC, ¶ 19. "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." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's determination of a question of fact is supported by the manifest weight of the evidence. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982). Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination. *Id.*

¶ 33 A reviewing court must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn, nor should a court substitute its judgment for that of the Commission unless the Commission's findings are against the manifest weight of the evidence. *Parro v. Industrial Comm'n*, 167 Ill. 2d 385, 396 (1995); *Castaneda v. Industrial Comm'n*, 97 Ill. 2d 338, 341 (1983). A decision is

contrary to the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Elgin Board of Education School District U-46 v. Illinois Workers' Compensation Comm'n,* 409 Ill. App. 3d 943, 949 (2011).

¶ 34 In the present case, the Commission affirmed and adopted the decision of the arbitrator. Although the claimant attributed her acute respiratory ailments to ongoing exposure to the "dusty and moldy" condition of the library, the Commission was not convinced. As such, the Commission concluded that the medical records, expert testimony, and evidence had failed to support the claimant's argument that her injury arose out of and in the course of her employment. In denying the claimant's request for benefits, the Commission considered the credibility of the claimant's testimony. The Commission found that the claimant's responses were "self-serving, occasionally belligerent, overly dramatic and prone to exaggeration," and that her testimony generally lacked both "candor and credibility."

¶ 35 In conjunction with her general contention that the Commission failed to consider and properly assess all of the evidence, the claimant cites *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 176-78 (1983), asserting she was required to establish only that her preexisting respiratory ailments "might have" or "could have" been aggravated by exposure to the moldy and dusty condition in the library. In an effort to establish a causal connection, the claimant points out that the air quality study found two types of mold in the library. Additionally, the claimant asserts that "both medical experts agreed *** that her exposure to mold and dust at work 'could have' or 'might have' caused her to become symptomatic."

¶ 36 In *Mason & Dixon Lines, Inc.*, claimant's diabetes-induced gangrene was aggravated when a heavy cart rolled over his foot. 99 Ill. 2d at 176-78. As a result, amputation was necessary. *Id.* at 178. The Commission considered testimony of two medical experts that any trauma to claimant's foot could have aggravated the preexisting gangrene, although the natural progression of his diabetic condition could have led to amputation, regardless of any trauma to the foot. *Id.* The Commission determined that the cart accident occurred approximately one week before claimant was diagnosed with diabetic gangrene—a time period in which trauma could have caused his gangrenous condition in his foot. *Id.* at 180.

¶ 37 In affirming the Commission's finding of a causal relationship, the Illinois Supreme Court determined that a "finding of a causal relation may be based on a medical expert's opinion that an accident 'could have' or 'might have' caused an injury." *Id.* at 182. The Commission also determined that claimant was credible. *Id.* Accordingly, the supreme court found that the Commission's decision was not contrary to the manifest weight of the evidence where evidence supported a finding that the accident had aggravated claimant's condition or accelerated his need for amputation. *Id.*

¶ 38 We find the claimant's reliance on *Mason & Dixon Lines, Inc*. misplaced. Unlike *Mason & Dixon Lines, Inc.*, where evidence supported a finding that the cart accident could have or might have led to amputation, given claimant's credible testimony and the one week period of time that occurred between the accident and claimant's gangrene diagnosis, here, the Commission determined that the claimant's testimony lacked "candor and credibility," and that the evidence demonstrated that her chronic condition was

capable of being provoked by routine and common environmental triggers, not specific to her work environment. In particular, the claimant's medical records demonstrated that she had ongoing complaints during the summer months and after she was terminated from CSD. The record also reflects that the claimant demonstrated a decrease in respiratory symptoms during the September 2, 2008, visit, despite her return to work two weeks prior.

¶ 39 Additionally, in addressing the overall work conditions, Dr. Hyers testified that "I don't know that the claimant's work environment would have been any more aggravating to her than any other environment" because dust and mold are "everywhere." Overall, the fungal study concluded that the concentration of spores inside the library "d[id] not appear significant enough as expected with a potential microbial growth within these areas." Thus, Dr. Win "c[ould not] verify that her [work] environment 'caused' her respiratory problems."

¶ 40 While we agree with the general premise that it is not necessary for a medical witness to testify positively as to the cause of an injury and *may* testify in terms of "could have" or "might have," it is the Commission's duty to determine the facts and to determine whether there exists sufficient evidence to prove a causal relationship between the employment and the injury. *Beloit Foundry v. Industrial Comm'n*, 62 Ill. 2d 535, 539 (1976); see also *Chicago Tribune v. Industrial Comm'n*, 42 Ill. 2d 476, 478 (1969). This court has consistently held that it is for the Commission to determine which testimony to accept when conflicting medical evidence regarding causation exists. *Illinois Valley Irrigation, Inc. v. Industrial Comm'n*, 66 Ill. 2d 234, 241 (1977). As such, we reject the

claimant's assertion that she was only required to establish that her acute respiratory ailments "could have" or "might have" been aggravated by her alleged exposure. This is simply not the standard set forth by the Act. "To obtain compensation under this Act, an employee bears the burden of showing, by a preponderance of the evidence, that he or she *has sustained* accidental injuries arising out of and in the course of the employment." (Emphasis added.) 820 ILCS 305/1(d) (West 2012).

¶ 41 Based on the foregoing, the Commission's decision that the claimant failed to show sufficient credible evidence that her acute respiratory ailments were causally related to her workplace environment and thereby arose out of and in the course of her employment was not against the manifest weight of the evidence.

III. Conclusion

¶ 42 For the foregoing reasons, the order of the St. Clair County circuit court confirming the Commission's decision is affirmed.

¶ 43 Affirmed.