2018 IL App (5th) 170480WC-U

Workers' Compensation
Commission Division
Order Filed: October 2, 2018

No. 5-17-0480WC

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

RICHARD REDNOUR,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Madison County
	)	
v.	)	No. 2017 MR 137
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION *et al.*,	)	Honorable
	)	David W. Dugan,
(Metro Contract Services, Appellee).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: We affirmed the circuit court's order which confirmed the Commission's decision which denied the claimant benefits under the Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 2008)), for an injury to his abdomen.

¶ 2 The claimant, Richard Rednour, appeals from an order of the circuit court of Madison County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission) denying him benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)), for an injury that he allegedly sustained to his abdomen on July 22,

2010, while in the employ of Metro Contract Services (Metro). For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 The following factual recitation is taken from the evidence adduced at the arbitration hearing held on February 16, 2015.

¶ 4 The claimant testified that he began working for Metro in 2007. Prior to his accident on July 22, 2010, the claimant had received treatment for a number of abdominal issues including a GI endoscopy. He was treated for a hernia in 2001 and was assessed with diverticulitis and underwent a left colon resection in June 2009. In July 2009, the claimant underwent a cholecystectomy and was complaining of a constant burning sensation in his stomach on August 3, 2009. On March 4, 2010, the claimant was seen by Dr. Pickett and again, complained of abdominal pain. Dr. Pickett believed that the claimant might have had possible abdominal adhesions. On July 2, 2010, the claimant returned to Dr. Pickett, complaining of a bulge in the right side of his abdomen with occasional pain. He was diagnosed with a ventral hernia and the doctor noted that the abdomen was normal except that there was a "palpable [abdominal] wall defect in the right middle [abdomen consistent with] hernia." Both the claimant's testimony and Dr. Pickett's records reflect that the hernia was reducible. On July 2, 2010, Dr. Pickett referred the claimant to a general surgeon for a hernia repair.

¶ 5 The claimant testified that on July 22, 2010, he was employed by Metro, conducting foundation installments on a rail yard in Battlecreek, Michigan. He was moving railroad ties by hand and testified that he bent down to grab one of the railroad ties to slide it on top of another one, when something "went boom" and "just blew out" in his abdominal area. He further testified that his abdomen changed in appearance after the accident, that it seemed to be

"extended" in the center of his abdomen, and that "everything seemed to be swollen." He did not seek medical treatment on July 22, 2010.

¶ 6 The claimant testified that he completed an injury report on July 26, 2010, and noticed two bulges on his abdomen, one that was from a previous hernia and one that appeared after the July 22, 2010 incident. That same day, Metro sent the claimant to BarnesCare. He reported pain and swelling in his right abdomen, was diagnosed with a right ventral hernia, and was referred to a general surgeon. The records of BarnesCare describe the hernia as right para-midline above the umbilicus which "spontaneously reduces." The BarnesCare records did not contain any reference to the July 2, 2010 hernia diagnosis. The claimant indicated on the "BarnesCare Authorization for Release of Medical Information and Registration Form" that he had not been previously treated for this abdominal injury, he selected "no" when asked if he ever had any previous injury to "the part of [his] body that is injured today", and also selected "no" when asked if he ever had an "[i]nguinal injury or hernia."

¶ 7 The claimant was also evaluated by his own physician, Dr. Pickett, on July 26, 2010. Dr. Pickett indicated that the claimant was seen for a "follow up with increase in pain at a ventral hernia." He indicated that the claimant had "pain at the right middle [abdomen] without palpable defect" and assessed that the claimant had a "ventral hernia with possible omentum incarceration." Dr. Pickett also noted that the claimant had an appointment scheduled with a surgeon on August 15, 2010. There was no indication in Dr. Pickett's notes that the ventral hernia on July 26, 2010, was different from the ventral hernia noted at the July 2, 2010 visit. According to the physical examination, the hernia was located in the "right middle abdomen" both on July 2, 2010, and July 26, 2010.

¶ 8 On September 1, 2010, the claimant underwent surgery performed by Dr. Hafenrichter. Dr. Hafenrichter repaired two hernias, the ventral hernia and a Bochdalek hernia, which was discovered during the diagnostic laparoscopy.

¶ 9 On May 15, 2012, the claimant was evaluated at Human Support Services and was diagnosed with "Major Depressive Disorder, Recurrent, Severe [without] psychotic features." On May 22, 2012, the claimant was seen by Dr. Pickett whose medical assessment was that the claimant had chronic abdominal pain due to past surgical scarring. Dr. Pickett indicated that a number of the claimant's physical functions were impaired, including his ability to feel, see, hear, and speak. The claimant was given a number of restrictions from Dr. Pickett, specifically: (1) lifting or carrying no more than 10 pounds; (2) standing and walking no more than 15 minutes without interruption for a total of 15 minutes in an 8-hour day; (3) sitting no more than 1 hour in a workday; and (4) never climbing, balancing, stooping, crouching, kneeling, or crawling.

¶ 10 On September 12, 2012, Dr. Meyers performed an evaluation of the claimant at the request of his attorney. In the "Past Medical History" section of Dr. Meyers' report, there was no mention of a July 2, 2010 hernia. Dr. Meyers diagnosed the claimant with an incarcerated ventral incisional hernia requiring complex hernia repair, incarcerated Bochdalek diaphragmatic hernia requiring operative repair, depression secondary to his operation and his inability to resume normal work, and refractory postoperative abdominal pain. He also opined that the claimant's medical conditions were causally related to the July 22, 2010 injury. He further opined that the claimant is "100% permanently and totally disabled" as a result of the July 22, 2010 injury.

¶ 11 Dr. Meyers testified that a "ventral incisional hernia" occurs after a patient has a previous incision and then a hernia presents and that the claimant's "ventral incisional hernia" presented

after his colectomy on June 23, 2009. Dr. Meyers also testified that he believed that the Bochdalek hernia was traumatically induced when the claimant lifted the railroad ties because it "increased intraabdominal pressure." Dr. Meyers further testified that he did not review the records of Dr. Pickett prior to reaching his conclusion, but his opinion that the July 22, 2010 incident caused the claimant's hernia and need for surgery remained unchanged after reviewing the report that Dr. Pickett diagnosed the claimant with a ventral hernia on July 2, 2010.

¶ 12 Dr. Pruett evaluated the claimant on March 12, 2014 at the request of Metro. He opined that the claimant's condition of ill-being was not causally related to the July 22, 2010 incident. Initially, Dr. Pruett believed that the claimant's condition of ill-being was causally related to the July 22, 2010 accident. He explained that his initial opinions were based on the medical history that the claimant had given him indicating no prior abdominal wall problems and that the abdominal pain was new, as of July 22, 2010. Dr. Pruett prepared a report on January 6, 2015, after being made aware of Dr. Pickett's note of July 2, 2010. Dr. Pruett noted that 20 days before the July 22, 2010 incident, the claimant reported an abdominal wall hernia to his primary care physician and testified that, because the claimant had a pre-existing hernia, the incident on July 22, 2010 did not cause the hernia that was later surgically treated by Dr. Hafenrichter. Dr. Pruett also opined that it would have been impossible for a hernia diagnosed twenty days beforehand to have healed by the July 22, 2010 incident. Dr. Pruett further testified that as a general rule "hernias start out small, get bigger and become complex. So hernias that start out reducible can become incarcerated with time with or without significant incident." Dr. Pruett also discussed Dr. Hafenrichter's findings during surgery and agreed that the claimant had an abdominal wall hernia and a Bochdalek hernia, noting that a Bochdalek hernia cannot be seen on the outside of the patient. Further, Dr. Pruett explained that a Bochdalek hernia is a congenital hernia which

cannot be traumatically induced. Moreover, Dr. Pruett noted that a Bochdalek hernia is a defect in the diaphragm, and by its definition, is a birth defect that occurs during fetal development.

¶ 13 Timothy Lalk is a vocational rehabilitation counselor retained by the claimant, who testified by deposition on August 29, 2014. Lalk saw the claimant on June 11, 2014. He opined that, based upon the restrictions given to him by Dr. Pickett and the psychiatric assessment done in May 2012, the claimant is unable to secure and maintain employment in the open labor market and is not able to compete for any position, even at a sedentary level.

¶ 14 The claimant testified that he has not worked since July 22, 2010. In addition to his pain, he cries every day. He does not believe that he can work because of the constant pain in his rib area. He has lost strength in his upper body, is only able to lift 5-10 pounds, walking is difficult for him, and sitting more than 5-10 minutes is painful. He states that he spends his days in his recliner or in bed and that once or twice a week the pain is so severe that he can hardly move.

¶ 15 Following a hearing, the arbitrator found that the claimant sustained an accidental injury arising out of and in the course of his employment with Metro, but that his current condition of ill-being is not causally related to his work accident. The arbitrator determined that the medical services rendered to the claimant were reasonable and necessary, but because his current condition of ill-being is not causally related to his work accident, the claimant's claim for benefits was denied. In addition, the claimant's claim for temporary total disability (TTD) benefits under section 8(b) of the Act (820 ILCS 305/8(b) (West 2008)), was denied. Lastly, the arbitrator found that because the accident resulted in only a "transient increase" in the claimant's pain complaints and no permanent disability, the claimant's claim for permanent total disability (PTD) benefits under section 8(f) of the Act (820 ILCS 305/8(f) (West 2008)) was denied.

¶ 16 The claimant sought review of the arbitrator's decision before the Commission. The Commission affirmed and adopted the arbitrator's decision.

¶ 17 The claimant sought judicial review of the Commission's decision in the circuit court of Madison County. The circuit court confirmed the Commission's decision, and this appeal followed.

¶ 18 The claimant argues that the Commission's finding that his condition of ill-being is not causally related to his work-related accident of July 22, 2010, is against the manifest weight of the evidence. In support of this argument, the claimant relies on the fact that prior to the work accident his hernia was palpable and easily reduced, but after his work accident, Dr. Pickett described his hernia as incarcerated. The claimant asserts that because both Dr. Meyers and Dr. Pruett agree that very few congenital Bochdalek hernias go undetected at birth, his Bochdalek hernia was likely traumatically caused by the accident due to the increase in pressure to the abdomen. The claimant also maintains that the surgical resection of his colon in 2009 and the upper GI endoscopy did not reveal any pre-existing hernias. Lastly, the claimant maintains that even if the Bochdalek hernia existed at birth, the work accident caused a change in the pathology of the hernia, rendering it a compensable injury.

¶ 19 The claimant has the burden of establishing by a preponderance of the evidence the elements of his claim, including "some causal relation between the employment and the injury." *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989). 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 the issue 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, and resolve conflicting medical evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). 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; rather, the appropriate test is "whether there is sufficient evidence in the record to support the Commission's decision." *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982). We will affirm a decision of the Commission if there is any basis in the record to do so, regardless of whether the Commission's reasoning is correct or sound. *Freeman United Coal Mining Co. v. Industrial Comm'n*, 283 Ill. App. 3d 785, 793 (1996).

¶ 20 Employers take their employees as they find them, and even though an employee has a pre-existing condition that makes him more vulnerable to injury, recovery for an accidental work injury will not be denied as long as it can be shown that the employment was a causative factor. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Recovery in such a case will depend upon the claimant's ability to show that his work-related accident aggravated or accelerated the condition such that the current condition of ill-being can be said to have been causally connected to the work accident and not simply the result of a normal degenerative process of the pre-existing condition. *Id.* at 204-05.

¶ 21 Applying these standards, we cannot conclude that the Commission's finding that the claimant's current abdominal condition of ill-being is not causally related to his work accident of July 22, 2010, is against the manifest weight of the evidence. The Commission rejected the claimant's testimony that he had two bulges in his abdomen after the incident on July 22, 2010, noting that the medical records simply did not support his claims. On July 2, 2010 the claimant was diagnosed with a ventral hernia and Dr. Pickett noted that it was located in "the right

middle." Four days after the incident, on July 26, 2010, the claimant returned to Dr. Pickett for a "follow up with increase in pain at a ventral hernia." Dr. Pickett indicated that the claimant had "pain at the right middle abdomen without palpable defect." There was no mention in the records of more than one abdominal bulge or that the ventral hernia was a different hernia than the one noted on the July 2, 2010 visit. Moreover, the location of the hernia was the same on both the July 2, 2010 and July 26, 2010 visits, the "right middle abdomen." Although Dr. Pickett indicated on July 26, 2010 that the ventral hernia had "possible omentum incarceration," Dr. Pruett opined that hernias can become incarcerated over time without any significant incident. On September 1, 2010, Dr. Hafenrichter performed surgery on the claimant, repairing two hernias, a ventral hernia and a Bochdalek hernia. Based on the medical evidence in the record, Bochdalek hernias are not visible outside of the body and result in a lower volume of material in the abdominal cavity, rendering the claimant's testimony that he had two visible bulges on July 22, 2010 unpersuasive to the Commission. The Commission could reasonably conclude that the medical evidence indicating that the ventral hernia diagnosed on July 2, 2010, was the same as the ventral hernia on July 26, 2010, and that the scientific invisibility of a Bochdalek hernia on the outside of the body rendered claimant's testimony unpersuasive.

¶ 22 The Commission was also unpersuaded by the claimant's testimony that he told all of the doctors about his July 2, 2010 hernia diagnosis. There was no mention of any pre-existing hernia in Dr. Hafenrichter's records, the claimant denied any pre-existing hernia on his paperwork when he visited BarnesCare on July 26, 2010, Dr. Pruett testified that the claimant told him that his hernia was new, as of July 22, 2010, and in the "Past Medical History" section of Dr. Meyers' report, there is no mention of a July 2, 2010 hernia diagnosis.

¶ 23 The Commission also supported its decision by relying upon the medical opinion of Dr. Pruett over that of Dr. Meyers. Dr. Pruett opined, after reviewing Dr. Pickett's July 2, 2010 records, that the claimant's ventral hernia was not work related, noting that the claimant's ventral hernia was diagnosed 20 days before his alleged work accident and that it would not have been possible for his prior hernia to have healed before the July 22, 2010 accident. Moreover, Dr. Pruett testified that hernias generally start out reducible and become incarcerated in time without a significant event. The Commission gave considerable weight to that fact that the claimant had a pre-existing hernia on July 2, 2010 and was referred to a surgeon for surgical intervention prior to the July 22, 2010 accident, leading it to find that the evidence does not support the conclusion that the hernia became incarcerated as a result of the July 22, 2010 incident. Dr. Pruett explained that a Bochdalek hernia is congenital and occurs during fetal development, which by definition means that it cannot be traumatically induced. Dr. Meyers indicated that the defect which allows a Bochdalek hernia to develop is congenital, but that the herniation itself could be the result of trauma. The Commission found the testimony of Dr. Pruett more persuasive than Dr. Meyers and concluded that the claimant suffered from a pre-existing hernia as well as an asymptomatic Bochdalek hernia. The Commission also found that even though at the time of the incident on July 22, 2010, the claimant sustained an increase in the symptoms of his pre-existing hernia, because he required surgery prior to July 22, 2010, it does not follow that that the July 22, 2010 incident caused or contributed to the need for surgery.

¶ 24 It was the function of the Commission to resolve the conflict in medical testimony (*O'Dette*, 79 Ill. 2d at 253), and we will not substitute our judgment or reweigh the evidence because a different inference could be drawn from the evidence. The causation opinion of Dr.

Pruett coupled with the medical records are more than sufficient to support the conclusions reached by the Commission in making its causation determination.

¶ 25 Based upon the record before us, we conclude that the Commission's finding that the claimant's current condition of abdominal ill-being is not causally related to his work accident of July 22, 2010, is not against the manifest weight of the evidence. Having reached this conclusion, we need not address his remaining arguments regarding medical expenses and disability benefits as "[a] prerequisite to the right to compensation is that the accidental injury must arise out of, as well as occur, in the course of the employment *** sufficient to give rise to the right to compensation. There must be some causal relation between the employment and the injury." *Schwartz v. Industrial Comm'n*, 379 Ill. 139, 144-45 (1942).

¶ 26 For the reasons stated, we affirm the judgment of the circuit court of Madison County, which confirmed the decision of the Commission.

¶ 27 Affirmed.