2018 IL App (5th) 180012WC-U

Order filed November 19, 2018

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

EDGAR BLEDSOE,	)	Appeal from the Circuit Court
	)	of the First Judicial Circuit,
	)	Saline County, Illinois
	)	
Appellant,	)	
	)	
v.	)	Appeal No. 5-18-0012WC
	)	Circuit No. 17-MR-16
	)	
ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.*, (The American Coal Co., Appellees).	)	Honorable Todd D. Lambert, Judge, Presiding.

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

ORDER

¶ 1 *Held*: The Commission's decision was not against the manifest weight of the evidence.

¶ 2 The claimant, Edgar Bledsoe, 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 Saline 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 was taken from the evidence presented at the arbitration hearing held before Arbitrator Nancy Lindsay in Herrin, Illinois, on March 12, 2015.

¶ 6 The claimant was 67 years old at the time of arbitration. He graduated from Egyptian High School in Thebes, Illinois in 1966. Following two years in military service and approximately five years in retail and construction, the claimant began a coal mining career lasting 35 years, most of which was underground. During his coal mining career, in addition to coal dust, he was exposed to silica, roof bolting fumes and diesel fumes.

¶ 7 The claimant's last day of exposure in a coal mine was November 14, 2010, at the Galatia mine owned and operated by The American Coal Company (employer). The claimant testified that he was 62 years old on that date and his work classification was "long wall operator." He further testified that he quit working on that day because he had developed a blood disorder and an ulcer. He testified that he eventually retired in February 2011, and had not worked since his last day at the Galatia mine. The claimant further testified that he began to experience shortness of breath and similar breathing problems five or six years prior to his last date of employment. At the time of the arbitration hearing, his daily activities were limited by breathing problems. He testified that he never smoked cigarettes in his life.

¶ 8 Medical records pertaining to the claimant beginning in 1999 were entered into evidence. A chest x-ray performed on March 31, 2000, was interpreted by the claimant's treating physician as normal. The record indicated a diagnosis of asthma. In 2002, the claimant complained of mild breathing problems and chest pains and received a diagnosis of mild hypertension and cardiovascular disease. In 2004, the claimant reported symptoms of shortness of breath upon exertion. He was diagnosed with cardiovascular occlusion, which was treated by cardiac catheterization and stents. In June 2006, the claimant was diagnosed with Chronic Obstructive Pulmonary Disease (COPD). Between June 2006 and February 2011, the claimant treated for various upper respiratory and breathing issues, all of which were mild or transitory in nature. The claimant also treated during that time period for certain cardiovascular issues, blood disorders and ulcers. The claimant decided to retire in February 2011 due to the blood disorder and ulcer.

¶ 9 On February 26, 2011, the claimant had a chest x-ray performed at the Marion VA Clinic. The x-ray was interpreted by Dr. Hisha T. Youssef as negative for pneumoconiosis or active COPD. The claimant was again treated at the VA clinic on March 8, 2011. Treatment notes from that visit established the claimant's lungs were clear.

¶ 10 On March 28, 2011, Dr. Henry K. Smith, board certified radiologist and NIOSH B-reader, interpreted the claimant's chest x-ray taken on March 8, 2011, as positive for pneumoconiosis with profusion 1/0 and P/S opacities in all lung zones. The claimant filed his Application for Adjustment of Claim in this matter on April 12, 2011, alleging shortness of breath and exercise intolerance as a result of inhaling coal mine dust in excess of 34 years. He alleged an accident date of February 28, 2011.

¶ 11 According to the claimant's treatment records from the VA clinic, on August 12, 2011, the claimant reported a sore throat and that he had been coughing up black-yellow sputum

mostly at night. The claimant reported some shortness of breath and a history of working in the coal mines. On examination, the lungs were clear to auscultation and an antibiotic was prescribed. The claimant was again seen at the VA clinic on August 23, 2011. Under review of systems respiratory there was no shortness of breath or cough. A physical examination of the lungs showed bilateral equal and fair air entry with no crackles or rhonchi. The claimant returned to the VA clinic on March 21, 2012, for a one-year follow-up of medical problems. The treatment notes showed no reports of shortness of breath, cough or phlegm. Physical examination of the lungs showed bilateral equal and fair air entry with no crackles or rhonchi. The claimant next treated on April 4, 2012, for an episode of loss of memory and a mild headache with numbness and tingling to the right hand. Review of systems respiratory showed no shortness of breath, cough or phlegm. A physical examination of the lungs showed that there was bilateral equal and fair air entry with no crackles or rhonchi. On that same date, he was seen in the emergency room at Good Samaritan Hospital where he was diagnosed with possible transient stroke symptoms. He returned to the VA clinic on June 4, 2012, reporting that he walked two miles a day and worked in his yard. The report noted the lungs were clear bilaterally. The claimant was seen at the VA on December 5, 2012, for management of the active medical problems. He had no new complaints. On review of systems respiratory there was no shortness of breath, cough or phlegm. On physical examination of the lungs, there was bilateral equal and fair air entry with no crackles or rhonchi.

¶ 12 On January 30, 2013, Dr. Michael Alexander, board certified radiologist and B-reader, interpreted chest x-ray dated March 8, 2011, as positive for pneumoconiosis, profusion 1/0 with P/P opacities in all lung zones. He also noted a 5mm granuloma in the right mid zone and recommended follow up evaluation.

¶ 13 On June 15, 2013 Dr. Cristopher A. Meyer, board certified radiologist and B-reader, interpreted a chest x-ray taken on March 1, 2007, as negative for pneumoconiosis. He also noted a granuloma in the right mid zone over the anterior fourth rib. He also reviewed a February 24, 2010, chest x-ray as negative for pneumoconiosis. He also noted a calcified granuloma in the right mid zone.

¶ 14 On October 2, 2013, Dr. Jeffrey W. Selby examined the claimant at the request of the employer's counsel. Dr. Selby is board certified in internal medicine and pulmonology. He has been a B-reader since 1985. Dr. Selby has a general pulmonology practice that entails both inpatient and outpatient. He does all manner of consultation work as far as chest, lungs or breathing disorders. His practice also includes occupational lung disease including individuals with coal workers' pneumoconiosis (CWP). Dr. Selby noted the claimant's report that on his last day of work halfway through his shift he had a spell. The claimant also reported that he had an ulcer and took off work for 289 days and then retired. At the time of Dr. Selby's examination, the claimant had no real complaints concerning his health. He reported occasional shortness of breath, but he was unsure as to when his shortness of breath started. Dr. Selby reported a statement by the claimant that "nothing bothered my breathing in the coal mines." The claimant further told Dr. Selby that he felt an occasional need to take a deep breath, and had a non-productive cough at times. He walked two miles on level ground at his own pace two to three times per week. The claimant told Dr. Selby that he "might be out of shape" but he denied any triggers for coughing, wheezing or shortness of breath.

¶ 15 The claimant underwent pulmonary function testing. The overall interpretation was normal spirometry, normal lung volumes and normal diffusing capacity. Dr. Selby interpreted x-ray of October 2, 2013, as negative for pneumoconiosis. The claimant also underwent exercise

testing with test results well within normal ranges.

¶ 16 The deposition of Dr. Cristopher A. Meyer was taken on behalf of the employer on July 16, 2014. Dr. Meyer reviewed the chest x-rays dated March 1, 2007, February 24, 2010, February 26, 2011, and March 8, 2011. He testified that he found no radiographic evidence of CWP in any of the films. He noted that there was a calcified granuloma in the right mid zone and some degenerative changes of the spine. He testified that there was no change on serial exams he reviewed. Dr. Meyer testified that he compared the February 26, 2011, film to the March 2007 and February 2010 films and compared the most recent examination to both of the older exams. He opined that there was no change of significance from the earliest film to the oldest film.

¶ 17 Dr. Meyer testified that he was board certified in radiology in 1992. Dr. Meyer has been a B-reader since 1999. Dr. Meyer was asked to take the B-reading exam by Dr. Jerome Wiot, who was on the original committee that designed the training course, which was called the B-reader program. He testified that a B-reader looks at the films of the lung to decide whether there are any small nodular opacities or linear opacities, and based on the size or appearance of the small opacities, they are given a letter score. Dr. Meyer testified that specific occupational lung diseases are described by specific opacity types. CWP is characteristically described by small round opacities. The distribution of opacities is also described because different pathologies are seen in different regions of the lung. CWP is typically an upper zone predominant process. The last component in the lung involvement piece for the small opacities is the extent of the lung involvement or the so-called profusion. Dr. Meyer testified that the profusion defines the density of the small opacities in the lung.

¶ 18 The deposition of Dr. Glennon Paul was taken on the claimant's behalf on December 1, 2014. Dr. Paul testified that he is board certified in internal medicine, asthma, allergy and

immunology. Dr. Paul testified that when he did his fellowship in 1970 to 1972, there were not any pulmonary fellowships developed. He is not a B-reader, nor is he board certified in pulmonology. Dr. Paul testified that based on all of the testing and data that he had available to him, he concluded that petitioner had CWP, chronic bronchitis and a restrictive ventilator defect. Dr. Paul testified that, in light of the diagnoses of CWP, restrictive defect, obstructive ventilator defect and chronic bronchitis, the claimant could not have further exposure to the environment of a coal mine without endangering his health. Dr. Paul testified that the claimant's diffusion capacity was low, which is typical of CWP. Dr. Paul further testified that the claimant had physiologically significant pulmonary impairment as demonstrated on pulmonary function testing. He testified that it was caused by coal dust and the coal mine environment. He opined that the claimant is totally disabled from working as a coal miner, and, based on his clinical presentation and the testing, the claimant could perform only light manual labor. Dr. Paul further testified, that by definition, if one has CWP, he has an impairment in the function of the lung at the site of the scar whether it can be measured clinically or not. Dr. Paul testified that the scarring of CWP can be both obstructive and restrictive and that CWP is considered to be a progressive disease.

¶ 19 Dr. Paul further testified that he examined the claimant one time at the request of his counsel. He testified that in the past year he had seen 10 or 12 people at the request of the claimant's counsel. Dr. Paul did not review any of the claimant's medical records. He testified that the claimant did not tell him that he retired from coal mining at the time he did on the recommendation of a physician. Dr. Paul did not know if the claimant left mining due to an inability to perform his job. Dr. Paul did not remember if the claimant told him he had any difficulties performing the last job duties that he had. Dr. Paul testified that simple CWP

classically presents itself asymptomatically and that it is more likely than not that simple CWP will not progress once the exposure ceases.

¶ 20 Dr. Selby was deposed on January 27, 2015. He testified that he is board certified in pulmonary disease and a certified B-reader. Dr. Selby reviewed the claimant's complete medical history. Dr. Selby testified that the claimant suffered from significant coronary artery disease. He observed that coronary artery disease and/or deconditioning are common causes of shortness of breath on exertion. Dr. Selby opined that the claimant's test results revealed no pulmonary obstruction or diffusion impairment. Dr. Selby testified that exercise testing is the gold standard to determine cardiopulmonary ability and the claimant's exercise testing did not reveal a limit to exercise based upon a ventilatory impairment. Dr. Selby opined that the claimant was "quite capable" of heavy manual labor from a pulmonary standpoint. Dr. Selby further opined that the claimant did not suffer from any respiratory or pulmonary abnormality as a result of coal mine dust inhalation or his coal mine employment. He saw no objective evidence of CWP, COPD, or asthma. He noted that the claimant was out of shape and suffered extensive coronary artery disease, sleep apnea and pulmonary hypertension. He opined that these conditions were most likely the cause of the claimant's shortness of breath and fatigue.

¶ 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. The arbitrator found the B-readings by Drs. Meyer and Selby as well as the independent NIOSH B-readers to be more persuasive than Dr. Paul's opinion. The arbitrator gave particular weight to the testimony of Dr. Meyer, noting that his background and experience in radiology, B reading, and CWP was more extensive than the claimant's treating physician, Dr. Paul. The arbitrator was particularly persuaded by Dr.

Meyer's testimony that the relative levels of experience are particularly significant where two B-readers reach different conclusions. In the final analysis, the arbitrator gave greater weight to Dr. Meyer's opinion based upon his overall experience in pulmonary pathology and his status and experience as a B-reader.

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

¶ 23 ANALYSIS

¶ 24 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.

¶ 25 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).

¶ 26 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 Workers' 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 (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).

¶ 27 Here, the Commission's finding that the claimant did not suffer from CWP, COPD, or any respiratory occupational disease rests firmly upon the opinions of Drs. Meyer and Selby, and the independent NIOSH B-readings. That evidence was far from unchallenged. The claimant's medical experts, Drs. Smith and Alexander, and the claimant's treating physician, Dr. Paul, all opined to an equal degree of medical certainty that the claimant suffered from CWP and/or COPD related to his employment. The weight to be accorded to 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 or COPD on numerous occasions, and all are recognized as qualified to give such opinions.

¶ 28 Regarding Dr. Paul, the Commission acknowledged his experience and expertise in internal medicine and the fact that he was the claimant's treating physician. However, the fact that Dr. Paul was not a B-reader, and thus had no professionally recognized credential in the interpretation of x-rays, diminished the weight the Commission accorded to his opinion. The claimant argues that the Commission gives too much weight and significance to the role of the B-reader and x-ray interpretation in diagnosing CWP. The differences of opinions over the degree of significance of locations of opacities and NIOSH standards have been addressed on many occasions. There is no need to cite to the plethora of cases where NIOSH standards and the opinions of B-readers have supported the Commission's previous findings regarding CWP in favor or both employers and claimants.[1] 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 (3d) 150500WC, ¶ 43. Here, it simply cannot be said that the conclusion opposite of that reached by the Commission is clearly apparent. Rather, the evidence was, in many ways, evenly balanced, making the Commission the ultimate decision maker.

[1] Although this court has addressed the relative weight the Commission gives to older x-rays on many occasions in the past, the claimant in this matter has raised a new argument regarding the opinions based on older x-rays. He argues that, if x-rays taken at the time he leaves the mine or at any time two years after show the presence of CWP, the Commission should not consider any opinions based on older films. Instead, it should weigh competing medical opinion testimony based solely on the most recent film, without any reference to the older films. This argument may have some merit in a case where the claimant objects to the admission of the older films in the Commission proceedings. That is not the case here, where the claimant acquiesced to the employer's admission of the older x-rays before the arbitrator. Because the claimant failed to object to the admission of the earlier films as evidence of CWP, he cannot now argue to this court that those films should be excluded as irrelevant. In cases previously before this court, we have recognized that, while the older x-rays may not be entitled to as much weight as more recent x-rays, the older films are still relevant to the question of whether the claimant has CWP. In future cases, it might be appropriate for a claimant to attack the admissibility of older films and the opinions supported by those films where the newest films show the presence of CWP.

¶ 29 The claimant also relies upon the *AMA Guides to Evaluation of Permanent Impairment Sixth Edition*, which states that a ratio of FCV and FCV1 of below 75% clearly establishes a measurable level of impairment. The claimant points to the fact that his FCV/FCV1 ratio was below 75% and it was error as a matter of law for the Commission to reject the conclusion dictated under the *AMA Guides*. We find no error as a matter of law. First, Dr. Selby acknowledged the claimant's ratio was below 75%, but he did not agree with the conclusion that the ratio established the presence of CWP. Moreover, as the employer points out, the *AMA Guides* address levels of impairment *after* a diagnosis of occupational disease. There is no reported case where the impairment ratio is proof of the presence of an occupational disease.

¶ 30 The claimant also maintains that the Commission erred in failing to find that he suffered from the occupational disease of chronic bronchitis aggravated by exposure to coal dust. We note that only his treating physician, Dr. Paul, diagnosed chronic bronchitis, and that Dr. Selby opined that the claimant did not suffer from chronic bronchitis. Given the difference of medical opinion, and the fact that the Commission gave greater weight to Dr. Selby's opinions, we cannot say that the Commission finding that the claimant did not establish chronic bronchitis was against the manifest weight of the evidence.

¶ 31 Regarding the claimant's argument that the Commission erred in not awarding him a wage differential benefit pursuant to section 8(d)(1) of the Workers' Compensation Act (820 ILCS 305/8(d)(1) (West 2010)), since we are affirming the Commission's finding that the claimant failed to establish his entitlement to compensation under the Act, there could be no error in the method of calculating the amount of the benefit. *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 436 (2011).

¶ 32 CONCLUSION

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

¶ 34 Affirmed.