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2019 IL App (5th) 180341WC-U

Order filed June 24, 2019

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

CHARLES BAKER,)	Appeal from the Circuit Court
)	of the First Judicial Circuit,
)	Williamson County, Illinois
)	
Appellant,)	
)	
v.)	Appeal No. 5-18-0341WC
)	Circuit No. 17-MR-290
)	
THE ILLINOIS WORKERS')	Honorable
COMPENSATION COMMISSION, <i>et al.</i>)	Carey C. Gill,
(The American Coal Co., Appellee).)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Hudson, and Barberis
concur in the judgment.

ORDER

¶ 1 *Held:* Because the decision of the Commission appears to be inconsistent as to whether the Commission considered or did not consider some items of evidence that the petitioner argues are irrelevant and inadmissible, remand to the Commission is necessary to clear up the ambiguity.

¶ 2 Petitioner, Charles Baker, made a claim for workers' compensation benefits, alleging he had contracted coal workers' pneumoconiosis in his employment as an underground mechanic for respondent, The American Coal Company. The Illinois Workers' Compensation

Commission (Commission) denied his claim, and the circuit court of Williamson County confirmed the Commission's decision. Petitioner appeals.

¶ 3 We vacate the decisions by the Commission and the circuit court, and we remand this case to the Commission with directions to issue a new decision, this time clarifying whether the Commission is or is not considering the X-rays from the National Institute of Occupational Health (National Institute) and in either event explaining why.

¶ 4 I. BACKGROUND

¶ 5 On June 23, 2016, the arbitrator decided that petitioner had “failed to prove by a preponderance of the evidence that he suffer[ed] from coal workers['] pneumoconiosis and/or reduced pulmonary capacity that arose out of and in the course of his employment.” Accordingly, the arbitrator denied all benefits.

¶ 6 On September 22, 2017, the Commission affirmed and adopted the arbitrator's decision as modified. The modification was to strike some of the sentences in which the arbitrator cited negative X-ray readings by the National Institute. (Pursuant to the Coal Workers' X-Ray Surveillance Program, the National Institute had taken periodic X-rays of petitioner's lungs, and readers at the National Institute had interpreted the X-rays.) Specifically, the Commission struck the following sentences from the arbitrator's decision:

“In *** concluding [that petitioner failed to prove he has coal workers' pneumoconiosis], the Arbitrator relies, in part, upon the findings of the two [National Institute] B-readers that Petitioner's x-ray of May 4, 2007, did not reveal any evidence of coal workers' pneumoconiosis. *** However, the Arbitrator gives less weight to these interpretations, due to the temporal remoteness of those x-rays to Petitioner's date of accident and last date of

exposure. The Arbitrator relies upon the opinions of the [National Institute] physicians, as [the National Institute] is the governmental agency responsible for administering the health surveillance program for the benefit of coal miners, [the National Institute] is not a party to this action, and the x-rays were taken and reviewed for reasons independent of litigation.

*** Nonetheless, the Arbitrator finds the reverberation of opinions amongst B-readers Dr. Meyer and Dr. Selby compelling in conjunction with the significant number of negative x-ray interpretations performed at the behest of [the National Institute], discussed above.”

¶ 7 On appeal, petitioner is unsatisfied by the striking of the sentences quoted above. In his view, the X-rays taken by the National Institute are irrelevant and the “taint” of those X-rays remains unpurged because the Commission (1) otherwise affirmed and adopted the arbitrator’s decision and (2) did not strike the following additional references the arbitrator made to the National Institute X-rays:

“The Arbitrator further notes that all of the [National Institute’s] B-readers and A-readers found Petitioner’s x-rays of January 19, 2000, and January 29, 2003, to be negative for coal workers’ pneumoconiosis. ***

* * *

*** The Arbitrator notes that both Dr. Meyer and Dr. Selby reviewed the chest x-ray of May 4, 2007, interpreted by [the National Institute] as negative, and likewise found the films to be negative for pneumoconiosis. *** Dr. Meyer noted in his report that he compared the 2012 film to the May 2007 film, and that it was

unchanged. *** The interpretations by Drs. Meyer and Selby were consistent with the independent readings by the [National Institute’s] physicians.”

¶ 8

II. ANALYSIS

¶ 9 As we said, petitioner argues that the Commission erred by considering the National Institute X-rays, which, in petitioner’s view, are irrelevant and, hence, inadmissible.

¶ 10 We review the Commission’s evidentiary ruling for an abuse of discretion. See *Greaney v. Industrial Comm’n*, 358 Ill. App. 3d 1002, 1010 (2005). To do so, we must have a reasonably clear understanding of what the Commission’s evidentiary ruling was. In its decision in the present case, the Commission appears to be inconsistent about the National Institute X-rays. On the one hand, the Commission explicitly strikes from the arbitrator’s decision some of the references to the National Institute X-rays, but on the other hand, the Commission otherwise adopts the arbitrator’s decision—including some unstricken references to those X-rays.

¶ 11

III. CONCLUSION

¶ 12 Therefore, pursuant to Illinois Supreme Court Rule 366(a)(5) (eff. Feb. 1, 1994), we vacate the circuit court’s decision and the Commission’s decision, and we remand this case to the Commission with directions to issue a new decision, this time clarifying whether the Commission is or is not considering the X-rays from the National Institute and in either event explaining why.

¶ 13

Vacated and remanded with directions.