

NOTICE

Decision filed 04/25/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

NO. 1-10-1974WC

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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).

WORKERS' COMPENSATION COMMISSION DIVISION

XEROX CORPORATION,

Appellant,

v.

ILLINOIS WORKERS' COMPENSATION  
COMMISSION, (Linda Sheu, Appellee).

) Appeal from the  
) Circuit Court of  
) Cook County.  
)  
)  
) No. 2009-L-51422  
)  
) Honorable  
) Sanjay Tailor  
) Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.

Presiding Justice McCullough and Justices Hoffman, Hudson, and Holdridge concurred in the judgment.

*Held:* The Commission's determination that the claimant was totally and permanently disabled due to social, mental, emotional, and psychiatric conditions of ill-being casually related to the March 17, 2000 accident was not against the manifest weight of the evidence.

ORDER

The claimant, Linda Sheu, filed an application for adjustment of claim against her employer, Xerox Corporation (the employer), seeking workers' compensation benefits for injuries resulting from a job related accident that occurred on March 17, 2000. The matter proceeded to an arbitration hearing. The disputed issues before the arbitrator included the nature and extent of the injury, permanent total disability, temporary total disability (TTD) benefits, causal connection, reasonableness and necessity of certain medical bills, and the

No. 1-10-1974WC

amount of credit due the employer for medical bills paid. The arbitrator found that the claimant sustained injuries that arose out of and in the course of her employment; that she was entitled to TTD benefits of \$500.03 per week from March 17, 2000, through December 4, 2007; that the employer must pay her the sum of \$500.03 per week for life, as provided in section 8(f) of the Act because she was wholly and permanently incapable of work on and after December 5, 2007; and that because she did not submit itemized medical bills, she was not entitled to reimbursement for any unpaid medical bills incurred prior to the hearing. The employer sought review of the arbitrator's decision before the Illinois Workers' Compensation Commission (the Commission). The Commission affirmed and adopted the decision of the arbitrator, and the employer then sought review of the Commission's decision in the circuit court of Cook County. The circuit court confirmed the decision of the Commission, and the employer appealed to this court.

### BACKGROUND

The claimant was raised in Vietnam, and in 1979, at age 19, emigrated to Chicago. She learned English while attending high school in Chicago. She graduated from high school in 1983, then attended DeVry Institute of Technology where, with a 3.4 grade point average, she earned an associate's degree in the electronic technician program. She was hired by the employer upon her graduation and started work on February 25, 1985.

The claimant testified that she was a product support representative for the employer. She repaired and serviced office machines in the Chicago loop. She generally walked to the service calls and pulled a two-wheeled cart that held her tools, parts, and service manuals. In 1998, the claimant's territory was enlarged, and she had to drive to certain service calls.

On March 17, 2000, the claimant drove to a service call. As she was crossing from

No. 1-10-1974WC

the parking facility to the building, she was stuck by a car. The claimant testified that she flew 15 feet and landed on the pavement. She stated that she lost consciousness after being hit, but she did not know for how long. When she awoke, she heard people yelling for help. She was taken to the hospital by ambulance.

The claimant remained in the hospital for 14 days. She sustained fractured left and right legs, a bruise to her finger, a bruise to her head, a bruised rib, and a lost tooth. While in the hospital, Dr. Christopher Lee, an orthopedic surgeon, performed surgery on her left leg. The claimant had two additional surgeries on her left leg. She testified that she continued her treatment with Dr. Lee for approximately two years. On September 21, 2001, Dr. Lee cleared the claimant for light duty work with no prolonged standing or walking for greater than 10 minutes at a time.

The claimant testified that, since the accident, she has not returned to work. She stated she suffers from a periodic "spot" in her vision, headaches, dizziness, leg pain, hearing loss, right rib pain, and memory loss. She stated that, prior to the accident, she enjoyed jogging, traveling, and going to the movies. She no longer does any of these activities. She now has difficulty doing daily activities such as cooking and laundry. She no longer drives because it makes her too nervous, and she relives the accident.

The claimant's sister, Kimberly Sheu Chong, testified about the changes in her sister since the accident. She stated that there are 10 children in the family, eight girls and two boys. She stated that, before the accident, the claimant did the cooking for the family, gardened, took care of the household, and financially supported five siblings and her parents. Since the accident, the claimant is no longer self-sufficient and relies on Kimberly to care for her. Additionally, Kimberly stated that the claimant "cries very often for no

No. 1-10-1974WC

reason."

Phil Reidda, PH.D., a clinical psychologist, testified that the claimant was referred to him for depression, he started treating her on May 15, 2002, and he had eleven sessions with her. He described the claimant as follows:

"Her gait was markedly inhibited. She walks with a cane. She seemed to be in an inordinate amount of pain. She cried consistently every session that I saw [the claimant.] She was distraught and frightened. She presented as this highly anxious, very frightened, very vulnerable, disabled lady."

Dr. Reidda diagnosed the claimant with post-traumatic stress disorder. He testified that her psychological state made it very difficult for her to function. He stated that her post-traumatic stress disorder prevents her from engaging in a job search because she believes she is physically in a lot of pain, she presents very limited mobility, and "she's preoccupied with her trauma and that is the only thing she's able to talk about."

Dr. Reidda testified that the claimant states she experiences pain and that reports of pain are always subjective. Despite the fact that an orthopedic doctor said that, from an orthopedic standpoint, the claimant was capable of unrestricted work, he believed that, because of her focus on her perception of her subjective pain, she cannot work. He also felt that she was not a good candidate for rehabilitation.

Dr. Jonathan D. Lewis, a board certified psychiatrist, testified that he treated the claimant. He first evaluated the claimant on November 18, 2002 in his role as director of the social services agency, Asian Human Services. Dr. Lewis diagnosed the claimant with post-traumatic stress disorder, the trauma being her automobile accident. The claimant's mother died of cancer in 2002. Dr. Lewis stated that while the loss of her mother caused

No. 1-10-1974WC

emotional upset, it was not the cause of her post-traumatic stress disorder. He stated that the claimant would not be able to work due to a combination of her physical and emotional issues.

Dr. Lewis further testified that the claimant's memory problems were a common feature of people who have been traumatized. He attributed it primarily to the interference of emotional distress and distractability. He attributed the claimant's memory problems more to her emotional issues than an organic brain injury. Dr. Lewis testified that he has worked extensively with Asian patients and has found that memory problems are a common complaint with Vietnamese people. He testified that when Vietnamese people "are distraught, they don't talk about being anxious or depressed. They often give physical analogs to their emotional distress, and one of the most common is 'I can't remember anything. I have trouble with my memory,' and it's not a sign of a cognitive difficulty. It's a sign of emotional distress."

Dr. Lewis testified that he treated the claimant for five months, starting in November 2002, and continuing until his colleague took over her care. He resumed treating her in October 2005. Based on his second series of visits with the claimant, he diagnosed her with depression in addition to post-traumatic stress disorder. This diagnosis was based on her continuing chronic depressed mood, crying spells, and insomnia. Dr. Lewis testified that she is unable to work due to her lack of concentration, depressed mood, and inability to sustain a focus that would be required for any job. He stated that since the accident, she is "quite constricted" due to her emotional state, depression and post-traumatic stress disorder and her continuing pain. He opined that her work-related accident in which she was struck by a car, was a contributing factor to her development of post-traumatic stress disorder and

No. 1-10-1974WC

depression.

In a "Summary of Psychiatric Treatment" of the claimant that Dr. Lewis dated February 26, 2006, he wrote that the claimant "experienced intrusive memories related to her accident, had frightening dreams involving blood, was tearful when mentioning anything to do with her accident and its consequences, and had a generally depressed mood." He noted that the claimant became anxious when crossing streets or riding in cars, was in a heightened alertness when walking outside, and was startled by the sound of sirens. He wrote that she had developed multiple physical problems as a result of the accident and that they "are a more or less constant reminder of her changed status since her accident." In reaching his diagnosis of post-traumatic stress disorder, Dr. Lewis considered the following factors:

"She experienced an identifiable trauma which threatened her physical integrity and caused intense fear and helplessness; she reexperiences the traumatic event in distressing memories and dreams; she exhibits 'persistent avoidance of stimuli associated with the trauma' as identified by diminished range of interests, avoidance of activities that recall the trauma, a restricted range of affect and constricted sense of her future; she has 'persistent symptoms of increased arousal' in her irritability, difficulty concentrating, hypervigilance and exaggerated startle responses. Finally, these disturbances cause significant impairment in her social and occupational functioning. The proximate cause of this disorder was the automobile accident."

On August 20, 2001, Dr. Ira Kornblatt, performed an orthopedic exam on the claimant at the request of the employer. In a letter dated August 21, 2001, he wrote that "it is my opinion that, from an orthopedic point of view, she is likely capable of returning to her

No. 1-10-1974WC

previous job as a repair technician for [the employer.] I do not believe that further physical therapy is likely to be beneficial." Dr. Kornblatt testified that, in his opinion, the claimant had sustained a severe injury to the left lower extremity and a fracture of the fibula, which had healed in excellent alignment. He opined that she "had a magnification of symptomatology." He stated that orthopedically she had recovered, but that he was "not an expert on the emotional issues."

Dr. Russell Glantz, a neurologist, testified that the claimant's headaches and dizziness were not the result of her March 17, 2000 accident. He stated that the numbness in her left foot was related to her accident. He testified that this could be uncomfortable and that "[s]ome people don't have any numbness, but they have a feeling of an unpleasant sensation." He stated that, other than the numbness in the claimant's foot, her other complaints were not physiologically causally related to the March 17, 2000 accident. He opined that, from a neurological point of view, the claimant was able to work.

Dr. Ronald Ganellen, a clinical psychologist, examined the claimant at the employer's request. In his neuropsychological evaluation of the claimant, he wrote that her performance was intact on a screening measure of language functioning, and that she performed significantly poorer than expected when reasoning, visual-spatial, sensory-perceptual, and motor speed were tested. Dr. Ganellen testified that, in a test of her intellectual functioning, she scored in the "mild mental retardation" range. He found this surprising, given her educational background and work history. He found that her presentation was "characteristic of individuals who deliberately exaggerate memory problems to convince others they are disabled."

Dr. Ganellen testified that the purpose of neuropsychological evaluation is to

No. 1-10-1974WC

determine whether there is any evidence of an injury to the brain. It was his opinion that "there is no objective evidence that the 2000 motor vehicle accident produced any significant or lasting impairment of [the claimant's] cognitive and memory functioning." He felt there were no specific deficits in neuropsychological functioning that would prevent the claimant from returning to work. He did not have an opinion, from a psychological standpoint, as to whether or not the claimant was able to work. Dr. Ganellen stated that post-traumatic stress disorder is not a condition that arises from an injury to the brain, and admitted that he could not "to a reasonable degree of psychological certainty rule out that [the claimant] is suffering from post-traumatic stress disorder arising in part at least from the injury she sustained at work on March 17, 2000."

On November 17, 2008, the arbitrator issued his decision. The arbitrator concluded that the claimant suffered social, mental, emotional and psychiatric conditions of ill-being causally related to her accident on March 17, 2000, which rendered her unable to work from the date of her accident through December 5, 2007, the first date of hearing. He awarded the claimant TTD benefits from March 17, 2000, through December 4, 2007. The arbitrator found that the claimant failed to submit itemized bills for unpaid medical treatment and therefore, the arbitrator concluded that she is not entitled to reimbursement for the bills.

The arbitrator noted that the claimant continues to treat with Dr. Lewis and Dr. Goodman, but that, other than a "Summary of Psychiatric Treatment" prepared by Dr. Lewis dated February 26, 2006, her attorney failed to offer into evidence medical records beyond July 23, 2003. The arbitrator found that the attorney's failure to offer updated records leaves the record without substantive evidence concerning when the claimant reached the point where it became evident that her condition was not going to improve to the point where she



No. 1-10-1974WC

could return to work. He found it was evident at the hearing that she had no reasonable prospect in the foreseeable future to recover to the point where her condition would allow her to return to work or even look for a job. "Based on the lack of updated records, the Arbitrator must infer that she had not reached maximum medical improvement until the date of the first hearing in this proceeding." The arbitrator concluded that the claimant suffered injuries which rendered her wholly and permanently incapable of work on and after December 5, 2007.

The employer appealed the arbitrator's decision to the Commission, and on September 28, 2009, the Commission entered a decision and opinion on review that affirmed and adopted the decision of the arbitrator, with one commissioner dissenting only on the issue that the claimant was permanently disabled from all gainful employment pursuant to Section 8(f) of the Act. The employer appealed to the circuit court of Cook County. On June 10, 2010, the circuit court confirmed the decision of the Commission. The employer filed a timely notice of appeal of the circuit court's judgment.

#### ANALYSIS

We first note that the claimant, as the appellee, has failed to file a brief in this court. The failure of the claimant to file a brief does not require automatic reversal, and the employer, as the appellant, continues to bear the burden of establishing error. *First Capitol Mortgage Corp. v. Talandis Construction Corp.*, 63 Ill. 2d 128, 131-32, 345 N.E.2d 493, 494-95 (1976). Although we need not become the claimant's advocate or search the record for the purpose of sustaining the Commission's decision, this court may decide the appeal on its merits if justice requires that we do so. *First Capitol Mortgage Corp.*, 63 Ill. 2d at 133, 345 N.E.2d at 495. Here, the employer's brief sufficiently frames the issues, and the

No. 1-10-1974WC

record is not extensive, so we will address the merits of the case.

On appeal, the employer argues that the Commission's determination that the claimant was permanently and totally disabled is against the manifest weight of the evidence. "A person is totally disabled when he cannot perform any services except those for which no reasonably stable labor market exists." *Max Shepard, Inc. v. Industrial Comm'n*, 348 Ill. App. 3d 893, 901, 810 N.E.2d 54, 61 (2004). To be entitled to permanent and total disability, the claimant need not show that she has been reduced to total physical incapacity. *Max Shepard, Inc.*, 348 Ill. App. 3d at 901, 810 N.E.2d at 61. Whether a claimant is totally and permanently disabled is a question of fact to be resolved by the Commission, and its determination will be disturbed on appeal only if it is contrary to the manifest weight of the evidence. *Max Shepard, Inc.*, 348 Ill. App. 3d at 901, 810 N.E.2d at 61. "A finding is not against the manifest weight of the evidence unless an opposite conclusion is clearly evident." *City of Springfield v. Industrial Comm'n*, 291 Ill. App. 3d 734, 739, 685 N.E.2d 12, 15 (1997).

The Commission found that the claimant suffered social, mental, emotional, and psychiatric conditions of ill-being causally related to her accident which rendered her permanently and totally disabled. The employer argues that Dr. Kornblatt, Dr. Glantz, and Dr. Ganellen opined that the claimant could return to work. Dr. Kornblatt testified that orthopedically, the claimant had recovered and could return to her job. However, he also stated that he was "not an expert on the emotional issues." Dr. Glantz testified that, from a neurological point of view, the claimant could work. Dr. Ganellen testified that there were no neuropsychological deficits that would prevent the claimant from working. He did not have an opinion, from a psychological standpoint, of whether or not the claimant was able

No. 1-10-1974WC

to work.

"In Illinois, psychological injuries are compensable under one of two theories[;] either physical-mental, when the injuries are related to and caused by a physical trauma or injury, or mental-mental, when the injuries are caused by sudden severe emotional shock traceable to a definite time and place and cause even though no physical trauma or injury was sustained." *Matlock v. Industrial Comm'n*, 321 Ill. App. 3d 167,171, 746 N.E.2d 751, 755 (2001). In the instant case, there is no dispute that the claimant suffered a work-related physical trauma when she was struck by a car. Doctor Reidda and Doctor Lewis diagnosed the claimant with post-traumatic stress disorder brought about by the car accident. Dr. Reidda opined that the claimant's psychological state made it difficult for her to function, and he felt she could not work.

While the employer argues that Dr. Lewis admitted that the claimant can work, that is a mischaracterization of his testimony. He testified that "I don't see her as capable of doing any kind of sustained work, even in terms of the chores she does." When asked on cross-examination, from a psychiatric standpoint, putting aside the physical aspect, what type of work could she do, Dr. Lewis responded:

"I'm kind of at a loss, because what I see is someone who is emotionally fragile, and what I mean by that is that she's quite prone to tears, sadness, has difficulty concentrating.

So if she were to be able to do - - again, putting the physical things aside, if she were able to do any kind of work, it would be one that would be very low stress and would not require sustained attention."

He went on to clarify that a job would have to

No. 1-10-1974WC

"be something practically custom made for her or, let's say, someone with the nature of her disabilities would be able to start and stop on their own, not be overseeing those requirement of having to get something done by a particular time. I don't think she's capable of focusing or concentrating or sustaining an effort mentally to accomplish anything that [an employee] would in an ordinary work situation."

A custom made job that allows a person to work only when she can focus or concentrate is not the type of job for which a stable labor market exists. There is sufficient medical evidence in the record to support a conclusion that the claimant is incapable of performing any services for which a stable labor market exists. Consequently, the Commission's finding that the claimant is totally and permanently disabled is not against the manifest weight of the evidence.

The employer next argues that the Commission's finding that the claimant's psychological condition is causally related to the work accident is against the manifest weight of the evidence. The employer argues that while the claimant's broken tooth and fractured right and left legs were casually related to the March 17, 2000 accident, the evidence shows that she suffered no other conditions of ill-being. It asserts that the record is filled with evidence that the claimant is exaggerating her symptoms and, consequently, no reasonable trier of fact can reach a conclusion based on her claims. It argues that the most significant evidence that the claimant fabricated the severity of her alleged psychological injury is Dr. Ganellen's opinion that the claimant's performance on the neuropsychological evaluation reflects a deliberate exaggeration of neuropsychological deficits. The employer also stressed that Dr. Glantz and Dr. Kornblatt testified that some of the claimant's complaints were not substantiated by medical findings.

No. 1-10-1974WC

Dr. Lewis, who has treated Asian patients extensively, testified that Vietnamese people "often give physical analogs to their emotional distress." He attributed the claimant's memory problems more to her emotional issues than an organic brain injury.

The resolution of conflicting medical testimony falls within the province of the Commission, and its findings will not be reversed unless contrary to the manifest weight of the evidence. *Sisbro Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206, 797 N.E.2d 665, 673 (2003). In the instant case, Dr Lewis and Dr. Reidda testified that the claimant suffered from post-traumatic stress disorder caused by the March 17, 2000 accident. Both physicians had multiple contacts with the claimant. Dr. Ganellen only evaluated the claimant once. In his "Summary of Psychiatric Treatment," Dr. Lewis described, in detail, what factors led him to diagnose the claimant with post-traumatic stress disorder.

While Dr. Ganellen testified that he thought the claimant was exaggerating her problems, he also stated that he could not, to a reasonable degree of psychological certainty, rule out that she suffered from post-traumatic stress disorder arising from the March 17, 2000 accident. Dr. Lewis wrote, "I believe it would be very difficult for [the claimant] to exaggerate or fake the emotional distress that she exhibits quite spontaneously each time she speaks of the consequences of her accident for her life since the trauma."

The arbitrator found that the claimant's condition of dependency and inability to function were readily observable during the four days of hearings. He noted that the claimant's activities of daily living have dramatically changed as testified to by both the claimant and her sister Kimberly. He found:

"The change[s] in her life activities are profound; they are so extensive and go so far to the core of her existence that they could not have been manufactured for purposes

No. 1-10-1974WC

of litigation. The sincerity of her personality deterioration was clearly reflected in the testimony and mannerisms of her sister while her sister testified. Her sister recounted the drastic changes in [claimant's] role in the extended family and the impact on her family members. The sister's frustration and concern were obviously sincere and deeply suffered."

The arbitrator found that the opinion of Dr. Lewis was highly credible and entitled to great weight. He noted that both the claimant and Kimberly testified concerning her social, mental, emotional, and psychiatric conditions of ill-being and the changes in her life. He found that "[t]he enormity of [claimant's] accident and the drastic changes which have taken place in her life and her role in her extended family, and the roles of the members of her extended family, clearly validate the credibility and weight to be given their respective testimony." The Commission affirmed the arbitrator's findings. There is sufficient evidence in the record to support the Commission's decision that the claimant's psychological condition is causally related to the accident.

The employer further argues that, even if the claimant does suffer from post-traumatic stress disorder, she failed to establish a causal relationship between the accident and her condition. Whether a causal connection between a claimant's injury and her employment exists is a question uniquely within the province of the Commission, and its decision will not be disturbed on review unless it is against the manifest weight of the evidence. *The City of Springfield*, 291 Ill. App. 3d at 739, 685 N.E.2d at 15. "A claimant need prove only that some act or phase of his or her employment was a causative factor in the ensuing injury." *Vogel v. Illinois Workers' Compensation Comm'n*, 354 Ill. App. 3d 780, 786, 821 N.E.2d 807, 812 (2005). The work-related injury need not be the only or principal causative factor,

No. 1-10-1974WC

as long as it was a causative factor in the resulting condition of ill-being. *Vogel*, 354 Ill. App. 3d at 786, 821 N.E.2d at 812.

In the present case, the claimant testified that she worked for the employer from 1985 until her accident. She was recognized numerous times for perfect attendance, and received several excellence awards. The claimant supported her family and took care of the household duties. The claimant and Kimberly testified that, after the accident, the claimant was no longer self-sufficient. The claimant lacked the ability to concentrate and focus. She was anxious and cried frequently. Dr. Reidda and Dr. Lewis both testified that she suffered from post-traumatic stress-disorder caused by the March 17, 2000 accident. Dr. Reidda testified that, prior to the accident, the claimant was functional and that while there was post-traumatic stress from all background experiences, the accident was "the straw that breaks the camel's back."

Dr. Lewis testified that the claimant may have been more vulnerable to post-traumatic stress disorder due to her history, but, prior to the accident, she had not had any emotional or physical symptoms and had functioned well. He stated that, given that she had not been symptomatic prior to the accident, it would have been unlikely that she would have developed symptoms unless some trauma had occurred. He testified that, while the death of the claimant's mother caused her to grieve, the symptoms of grief are distinct from the symptoms of post-traumatic stress disorder. He opined that the trauma that caused her post-traumatic stress disorder was the automobile accident. The Commission's decision that the claimant's condition of ill-being was causally related to the March 17, 2000 accident was not against the manifest weight of the evidence.

Finally, the employer argues that the Commission's decision as to the duration of

No. 1-10-1974WC

temporary total disability is against the manifest weight of the evidence. The employer acknowledges that the claimant was temporarily totally disabled from March 18, 2000 through September 17, 2001 and that it received credit for paying those benefits. It argues that the claimant was improperly awarded additional temporary total disability benefits from October 9, 2001 through December 4, 2007. The employers asserts that the claimant is not entitled to benefits for this period because she failed to show that she was unable to work. As previously discussed, the record contains evidence to support the Commission's finding that due to her social, mental, emotional, and psychiatric conditions of ill-being, the claimant was unable to work.

#### CONCLUSION

For the foregoing reasons, the decision of the circuit court confirming the decision of the Commission is hereby affirmed.

Affirmed.