

Workers' Compensation
Commission Division
Filed: December 28, 2012

No. 1-11-3044WC

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

CHRISTOPHER CHARLES,)	Appeal from the
)	Circuit Court of
Appellant and Cross-appellee,)	Cook County
)	
v.)	
)	No. 10 L 50995
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, <i>et al.</i> ,)	Honorable
(Royal Continental Box,)	Sheldon Gardner and
)	Margaret A. Brennan,
Appellee and Cross-appellant).)	Judges Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Justices Hudson, Holdridge, Turner and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* The claimant's appeal is not summarily dismissed, based on an inadequate statement of facts; the Commission's original, December 12, 2007, decision is not against the manifest weight of the evidence and is reinstated; the challenge to the Commission's award of vocational rehabilitation is rejected; and the matter is remanded to the Commission for further proceedings.

¶ 2 Both the claimant, Christopher Charles, and Royal Continental Box (Royal) have appealed from an order of the Circuit Court of Cook County which confirmed a decision of Illinois Workers'

Compensation Commission (Commission), awarding the claimant certain benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)), for a left-foot injury he allegedly received while in the employ of Royal. We consolidated the two appeals for review.

¶ 3 The following factual recitation is taken from the record of the November 15, 2006, arbitration hearing on this matter.

¶ 4 The claimant, who worked as a machine operator for Royal, testified that, on December 20, 2003, he was cleaning his machine when he accidentally stepped into a bucket of cleaning solution. He said that his left foot was submerged past the ankle and that, by the next day, he noticed discomfort in the foot. Thereafter, he sought treatment for a burn injury to his left foot.

¶ 5 The claimant visited Loyola University Medical Center's emergency room on December 22, 2003, and he was diagnosed with a chemical burn. During that visit, Dr. Richard Gamelli ordered the claimant not to return to work, and he prescribed medications and follow up care. In the ensuing weeks, the claimant received treatment at Loyola's burn clinic. On March 9, 2004, Dr. Gamelli referred the claimant to Loyola's pain clinic, for treatment of pain that reached from his left foot to above his left calf. On March 17, the claimant underwent a sympathetic nerve block. Notes of the claimant's March 31, 2004, visit to the pain clinic indicate that he had pain of 7 on a 10-point scale and that the March 17 nerve block did not relieve his pain. The pain clinic continued the claimant's previous pain prescriptions and recommended physical therapy. The claimant testified that he attended physical therapy sessions in April and May 2004 but that the sessions did not alleviate his foot pain.

¶ 6 On April 20, the claimant underwent another sympathetic nerve block to try to alleviate his

pain, but, at a May 12 pain clinic visit, the claimant reported no lasting relief. Notes of that pain clinic visit indicate that the claimant continued to report left-foot pain, at an intensity of 6 on a 10-point scale. The notes further indicate that the claimant stated that his pain was alleviated with medications and inactivity. At the end of that visit, it was recommended that the claimant undergo a functional capacity evaluation (FCE).

¶ 7 On May 26, 2004, the claimant underwent an FCE. At that examination, the claimant reported "constant 10/10 pain in left foot and ankle with radiating pain throughout the entire leg." The claimant was able to kneel, balance, and squat during the test, but he complained of pain during each of these activities and was sometimes limited as a result. In a balance test, the claimant was able to balance for only 6 seconds on his left leg.

¶ 8 The report of the claimant's FCE included an impression that the claimant gave full effort in grip and hand testing but sub-maximal effort in other tests. According to the report, the claimant's reports of fatigue or pain "did not correlate with observed postural changes with the lifting tests." The report further stated that, when the claimant's attention was diverted to other topics, he was able to complete lifts and tasks without complaint. Based on those impressions, and on the claimant's performance during the evaluation, the FCE report concluded that the claimant was capable of light-to-medium work, with the qualification that the claimant's inconsistent effort interfered with an accurate assessment of his abilities.

¶ 9 Following the FCE, the claimant underwent more physical therapy. Pain clinic notes from the claimant's June 7, 2004, visit indicate that the claimant was suffering from pain reaching from above his knee to his foot, still at an intensity of 6 out of 10. At the end of that visit, it was

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recommended that the claimant "return to work based on [the] FCE evaluation" and attempt to taper off some pain medication. The claimant was also given a prescription for psychological counseling, and physical therapy was discontinued.

¶ 10 A June 28, 2004, report of a psychological evaluation stated that the claimant was diagnosed with an adjustment disorder, and it noted that the claimant was "understandably unhappy" to be in "chronic pain."

¶ 11 At a June 28, 2004, burn clinic treatment visit, the claimant reported shooting pain from the base of his foot to his upper leg, at an intensity of 6 out of 10.

¶ 12 On July 9, the claimant saw Dr. Michael Pinzur, a foot and ankle specialist. Dr. Pinzur noted that the claimant's wounds were healed and that his neurological examinations were within normal limits. Dr. Pinzur ordered an MRI of the claimant's foot, and he ordered the claimant to wear a walking boot instead of a normal shoe. A July 23 report of that MRI noted no evidence of "bony or non bony coalition," "minimal increased intrasubstance signal within the achilles tendon, without definite tear," and "minimal nonspecific edema pattern" near the ankle joint.

¶ 13 On August 6, 2004, Dr. Pinzur released the claimant to work with no restrictions. On August 24, Dr. Pinzur wrote that the claimant reported "continued pain in his foot," but Dr. Pinzur stated that he could not "find a good explanation for his pain." Dr. Pinzur suspected chronic pain syndrome.

¶ 14 The claimant testified that he returned to work in September 2004.

¶ 15 Notes of the claimant's September 22, 2004, visit to Loyola's pain management clinic state that he reported that his left foot pain increased to a 10 out of 10 and that his employer was not honoring his work restrictions.

¶ 16 On October 5, 2004, the claimant underwent an EMG test, and the report of that test noted "findings consistent with injury to the left superficial peroneal nerve." A report of an EMG test undertaken on October 19 noted the same.

¶ 17 On October 19, the claimant reported to the pain clinic that his pain was a 10 out of 10 and that pain medications were ineffective. The notes from that visit indicate that the claimant had also stopped psychological treatment, which did not help his symptoms. The notes suggested that the claimant undergo a triple bone scan. Notes of the claimant's October 26 pain clinic visit state that the claimant continued to feel "constant" pain of 10 out of 10, "worse with walking and standing."

¶ 18 After an October 26, visit, Dr. Pinzur prescribed another psychological evaluation and also ordered a triple bone scan, which was performed on November 11. The report of the bone scan stated that the results were "essentially negative."

¶ 19 On November 9, the claimant visited the pain clinic reporting pain of 7 out of 10. The claimant's final appointment at Loyola's pain clinic took place on November 29, 2004. During that visit, the claimant reported left foot pain of a 10 out of 10.

¶ 20 On December 1, 2004, the claimant began treating with Dr. Jose Medina, who prescribed another EMG as well as pain medication. Dr. Medina wrote on the EMG report that it was "consistent with mild left superficial medial and deep peroneal neuropathies." Three weeks later, Dr. Medina recommended a nerve block, and he restricted the claimant's work to no walking or standing for more than 20 minutes per hour. The nerve block provided no sustained relief for the claimant. The claimant continued to treat with Dr. Medina every month through October 2005, and Dr. Medina continued the claimant's work restrictions through that period. Dr. Medina's treatment

notes indicate no significant changes to the claimant's condition during the time he saw Dr. Medina.

¶ 21 The claimant testified that Royal accommodated his work restrictions through February 2005. The claimant testified that, even after February 2005, he was unable to perform regular-duty work, because he was constantly in "a lot of pain." He stopped working for Royal on February 8, 2005. The claimant stated that he had sought some work after that date, and had in fact worked two weeks per month as a receptionist, but otherwise had not worked since his last day with Royal. He testified that he was training to drive school buses.

¶ 22 The claimant stated that, at the time of the arbitration hearing, he still had left-foot pain that was "constant from the bottom of the foot all through the leg pretty much," and he said that the pain worsened as he spent more time on his feet.

¶ 23 In his evidence deposition, Dr. Medina, a neurologist, testified that, in December 2004, he diagnosed the claimant with "multiple nerve injuries of the left foot caused by" his work accident. Although Dr. Medina did not state that he found evidence of major nerve damage in the claimant's left leg or foot, he testified that objective test results would not necessarily belie or support the claimant's assertions that he was suffering from pain. Dr. Medina explained that minor damage or even imperceptible damage can cause major pain, while major damage can cause minor pain. He testified that he saw the claimant every month from January to October 2005 and did not change his clinical findings regarding the claimant in that time period. In Dr. Medina's view, the claimant will require work restrictions for the remainder of his life. On cross-examination, Dr. Medina explained that he and other physicians had tried, with no lasting success, to use nerve blocks to alleviate the claimant's symptoms. He also testified on cross-examination that, in cases involving dystrophy, it

is not unusual for an injury to a nerve in the foot to cause pain radiating all the way up the leg, but he agreed that he found no evidence of dystrophy in the claimant. Dr. Medina stated that the claimant's pain was unexplained physiologically and that he based his assessments on the claimant's subjective pain reporting. Dr. Medina said that his "impression has never been that [the claimant is] malingering."

¶ 24 Dr. Richard Blonsky examined the claimant on January 3, 2005, at Royal's request. In his written report, Dr. Blonsky reviewed the claimant's medical history and recounted his own physical examination of the claimant. Based on those data, Dr. Blonsky concluded that the claimant "does have some degree of superficial peroneal nerve injury" likely related to his workplace accident. However, Dr. Blonsky wrote that "[t]his is a non-progressive disorder and associated pain typically diminishes with time." Dr. Blonsky stated that he could not explain the claimant's complaints of radiating leg pain, and he noted that the claimant demonstrated no difficulty in walking. Dr. Blonsky opined that the claimant had reached maximum medical improvement (MMI), that the claimant was magnifying his pain symptoms, and that the claimant was capable of returning to full-duty work.

¶ 25 In his deposition taken in connection with this case, Dr. Blonsky recalled that the claimant had a normal gait and showed no signs of reflex sympathetic dystrophy. Dr. Blonsky opined that the fact that sympathetic nerve blocks did not alleviate the claimant's pain indicated that any problems the claimant was experiencing were unrelated to his sympathetic nervous system. Dr. Blonsky further testified that the nerves that connect to the top of the foot are distinct from those that connect to the calf, so the claimant's reports of spreading pain due to nerve damage "[did not] make sense." Dr. Blonsky also noted that, during his examination, the claimant actually put significantly more

weight on his left leg than on his right. Dr. Blonsky further highlighted the FCE report, the remarkably high level of pain the claimant reported, the absence of significant clinical findings in tests performed on the claimant's foot, the failure of the claimant's physicians to find a specific cause for the claimant's pain, the claimant's psychological evaluation, and the fact that there were no observed muscular changes in the area of the claimant's pain. Based on these observations, Dr. Blonsky opined that the claimant was totally healed, had reached MMI by January 2004, and had no nerve injury. Dr. Blonsky further opined that the claimant could have returned to work in March or April 2004 without restrictions. Dr. Blonsky indicated that the claimant was probably exaggerating his pain complaints, most likely for financial reasons.

¶ 26 On March 7, 2007, the arbitrator issued a decision finding that the claimant's injury was compensable under the Act, and he awarded the claimant a total of 128 1/7 weeks of temporary total disability (TTD) benefits, for the periods between December 22, 2003, and August 29, 2004, and between February 9, 2005, and November 15, 2006, the date of the arbitration hearing. The arbitrator also ordered Royal to pay \$5,445 in medical expenses and to pay for vocational rehabilitation services. In so ordering, the arbitrator noted that he had observed the claimant during his testimony and had found him to be credible. The arbitrator also cited Dr. Medina's opinion that, even though the claimant's pain was physiologically unexplained, the pain was related to the claimant's workplace injury. The arbitrator further noted that none of the claimant's treating physicians recorded any indication that they believed he was exaggerating his symptoms or malingering. Based on these findings, the arbitrator credited the claimant's testimony and gave greater weight Dr. Medina's opinions than to Dr. Blonsky's.

¶ 27 Royal sought review of the arbitrator's decision before the Commission. On December 12, 2007, with one commissioner dissenting, the Commission affirmed and adopted the arbitrator's decision.

¶ 28 Royal filed a petition for review in the circuit court of Cook County. On August 28, 2008, the circuit court reversed the Commission's decision and remanded the matter to the Commission for entry of a decision granting the claimant no TTD benefits or medical expenses after spring 2004, the time the circuit court concluded that the claimant's condition had stabilized.

¶ 29 The claimant filed a notice of appeal challenging the circuit court's decision, but, on July 14, 2009, we dismissed the appeal for lack of jurisdiction, because the Commission had yet to calculate the claimant's TTD entitlement in accordance with the circuit court's August 28, 2008, order. See *Royal Continental Box v. Illinois Workers' Compensation Comm'n*, No. 1-08-2573WC (July 14, 2009) (unpublished order pursuant Supreme Court Rule 23 (eff. July 1, 1994)).

¶ 30 On May 27, 2010, the Commission issued a decision awarding the claimant 22 1/7 weeks of TTD, for the period between December 23, 2003, and May 26, 2004. The Commission vacated its prior award of medical expenses, but it did not vacate its prior award of vocational rehabilitation. It also remanded the matter to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 31 The parties sought review in the circuit court of Cook County, which confirmed the Commission's decision on September 20, 2011. The claimant now appeals to challenge the reduction in his TTD and medical expense awards, and Royal cross-appeals to challenge the award of vocational rehabilitation.

¶ 32 Before we address the claimant's appeal, we note Royal's request that we dismiss his appeal, or summarily affirm the circuit court, due to the deficient statement of facts in the claimant's opening brief. We agree with Royal that the statement of facts in the claimant's brief violates Supreme Court Rule 341(h)(6) (eff. July 1, 2008)), which requires that an appellant's statement of facts "contain the facts necessary to an understanding of the case." The claimant's statement of facts contains a procedural history but virtually no information about the evidence and arguments presented at any stage of that history. However, a violation of the Supreme Court Rules does not deprive us of jurisdiction, and "[i]t is within our discretion to consider the merits" of an appeal with deficient briefing. *Zadrozny*, 220 Ill. App. 3d at 293. In the exercise of our discretion, we decline to dismiss the claimant's appeal in this case.

¶ 33 On the merits, the claimant argues on appeal that the circuit court erred in setting aside the Commission's December 12, 2007, decision and remanding for the Commission to award the claimant TTD only until spring 2004. When, as in this case, the Commission's original decision is reversed as against the manifest weight of the evidence, we consider the propriety of the Commission's original decision in any appeal from a final order confirming the Commission's decision on remand. *Gilster Mary Lee Corp. v. Industrial Comm'n*, 326 Ill. App. 3d 177, 182, 759 N.E.2d 979 (2001).

¶ 34 In the claimant's view, the circuit court erred in setting aside the Commission's original decision, because there was ample evidence in the record to support the Commission's finding that he was entitled to TTD for the periods between December 22, 2003, and August 29, 2004, and between February 9, 2005, and November 15, 2006. The time during which a claimant is

temporarily totally disabled is a question of fact. *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118-19, 561 N.E.2d 623 (1990). It is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221 (1980). 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. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 509 N.E.2d 1005 (1987). For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291, 591 N.E.2d 894 (1992).

¶ 35 Here, Royal does not assert that the Commission erred in finding the claimant entitled to TTD from December 22, 2003, through August 29, 2004, that is, from the date of his injury until the date he returned to work. The dispute centers on whether he is also entitled to TTD from February 9, 2005, through November 15, 2006, that is, from the date he stopped work until the date of the arbitration hearing. In support of its finding that the claimant is entitled to TTD for the latter time period, the Commission cited the claimant's credible complaints of continued pain during that period, as well as the opinion of Dr. Medina. The Commission also noted that none of the claimant's treating physicians recorded any suspicion that he was exaggerating his pain.

¶ 36 These findings combine with the medical records to lend strong support to the Commission's TTD finding. There is no indication in the record, nor any suggestion from the parties, that the onset of the claimant's left foot pain did not coincide with his workplace accident. From that date forward, the claimant's continued pain complaints all described a similar type of pain in the same, albeit expanding, area of his body. Thus, the claimant's continued left-foot symptoms appear at first glance

to be related to the left-foot injury he suffered while in Royal's employ. Dr. Medina's medical opinion lends scientific credence to this conclusion.

¶ 37 Royal nonetheless challenges this conclusion principally by relying on the opinion of its expert, Dr. Blonsky. Dr. Blonsky opined at some length that the nerve suspected of causing the claimant's pain could not cause all the pain the claimant has identified, and he highlighted several observations that led him to the conclusion that the claimant was exaggerating his pain. However, the Commission is the ultimate arbiter of the credibility of the witnesses and evidence before it, and it found the claimant's subjective pain complaints to be credible. We will not now disturb that finding, especially where, as the Commission noted, it finds support in the fact that none of the claimant's treating physicians questioned his veracity. Royal also argues that Dr. Blonsky's testimony ruled out any physiological explanations for the claimant's symptoms, and it avers that the absence of such an explanation severely undercuts the claimant's claims of continued pain. However, Dr. Medina acknowledged that he had no definitive physiological explanation for the claimant's continued pain, yet he still opined that the claimant suffered from continued pain related to his workplace accident. Thus, the Commission was presented with this potential problem with the claimant's case but dismissed it by giving greater weight to Dr. Medina's opinion. Given the evidence supporting this decision, we cannot say that the Commission's resolution of the conflicting evidence was against the manifest weight of the evidence.

¶ 38 For the above reasons, we agree with the claimant that the circuit court erred in setting aside the Commission's original decision. We therefore reverse the circuit court's August 28, 2008, order, which vacated the Commission's December 12, 2007, decision, and we vacate the Commission's

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decision on remand. We also vacate the circuit court's September 20, 2011, order reviewing the Commission's decision on remand. We reinstate the Commission's December 12, 2007, decision, and we remand the matter to the Commission for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327.

¶ 39 In its cross-appeal, Royal asserts that the Commission erred in awarding vocational benefits to the claimant, because such an award is contrary to the circuit court's August 28, 2008, order setting aside the Commission's original TTD determination. Because we now reinstate the Commission's original TTD finding, we reject Royal's argument on cross appeal.

¶ 14 Circuit court order of August 28, 2008, reversed; Commission's May 27, 2010, decision on remand vacated; circuit court's September 20, 2011, order vacated; Commission's December 12, 2007, decision reinstated; and cause remanded.