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2013 IL App (1st) 122060WC-U

Order filed: January 6, 2014

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

BARBARA HAEPP,	)	Appeal from the Circuit Court
	)	of Cook County, Illinois
Appellant,	)	
	)	
v.	)	Appeal No. 1-12-2060WC
	)	Circuit No. 11-L-51273
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION <i>et al.</i> (City of Chicago, Appellee).	)	Margaret Ann Brennan,
	)	Judge, Presiding.

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PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.  
Justices Hoffman, Hudson, Harris, and Stewart concurred in the judgement.

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**ORDER**

- ¶ 1 *Held:* The Commission's finding that the claimant's current condition of ill-being of her lower back was not causally related to the March 2, 2007, accident was not against the manifest weight of the evidence.
- ¶ 2 The claimant, Barbara Haepp, a 49-year-old traffic aid at Midway Airport, filed an application for adjustment of claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2004)) seeking benefits for an injury to her knees and low back allegedly

occurring on March 7, 2007. On that date, while employed by the City of Chicago (employer), the claimant was struck by the bumper on a slowly moving car while she was directing traffic.

¶ 3 Following a hearing on February 28, 2011, an arbitrator found that the claimant suffered accidental injuries arising out of and in the course of her employment on March 2, 2007. The arbitrator also determined, however, that the claimant suffered only injury to her knees which had completely resolved and that the claimant's current condition of ill-being as to her low back was not causally related to the March 2, 2007, accident. The arbitrator awarded temporary total disability (TTD) benefits for 71 1/7 weeks, from March 2, 2007, through November 12, 2007, and from November 15, 2007, through July 14, 2008.

¶ 4 The claimant appealed to the Illinois Workers' Compensation Commission (the Commission) which affirmed and adopted the arbitrator's finding. The claimant sought judicial review of the Commission's decision in the circuit court of Cook County, which confirmed the Commission's decision. This appeal followed.

¶ 5 On appeal, the claimant maintains that the Commission's finding that her current condition of ill-being of her lower back was not causally related to the March 2, 2007, accident was against the manifest weight of the evidence.

¶ 6 **FACTS**

¶ 7 The claimant testified that since 1996 she had been employed by the City of Chicago as a traffic aid. She testified that she normally worked 8 to 12 hour shifts directing traffic at Midway Airport. Approximately half of her work day was spent standing and the other half she spent walking. The claimant further testified that on, March 2, 2007, she was directing traffic at Midway Airport on the arrivals level. At that time she was working full duty, and was not

receiving any medical treatment, nor was she under any physician's care. On that particular day, she was struck by a car traveling around 25 m.p.h. She was taken by ambulance from the scene of the accident to Christ Hospital Emergency Center. A diagnostic scan was performed on both the claimant's right and left knees. While a history taken in the emergency department which indicated "no knee pain prior to accident," the radiologist noted the scans were negative for fracture, but demonstrated findings in the left knee most likely due to trauma. The claimant was provided with a right knee immobilizer, a cane, pain and anti-inflammatory medication and instructed to follow up with a physician.

¶ 8 The claimant was directed by her employer to the City of Chicago's occupational clinic, MercyWorks. On March 3, 2007, a MercyWorks physician evaluated the claimant, prescribed an MRI of the right knee, and instructed the claimant to remain off work. The MRI was completed on March 20, 2007, at Westchester Imaging Center.

¶ 9 The claimant testified that on March 16, 2007, she gave a statement to the employer's workers' compensation adjuster, Andrea Delanski, informing her of the facts and circumstances of the accident and the nature of her injuries.

¶ 10 The claimant returned to MercyWorks as instructed on March 23, 2007, complaining of right knee pain along with low back pain. The MRI results were reviewed, and the claimant was provided an increase in pain medication, handouts on back pain, and a referral to Dr. Dirk Nelson. The claimant's off work restriction was continued.

¶ 11 The claimant was first examined by Dr. Nelson was on March 29, 2007. Dr. Nelson's notes reflect that the right knee MRI was positive for effusion and edema. He recommended

conservative care consisting of physical therapy. Following Dr. Nelson's recommendation, the claimant began a regiment of physical therapy at MercyWorks.

¶ 12 On April 12, 2007, the claimant was again evaluated by a MercyWorks physician. Once again, the claimant complained of low back pain, along with a feeling of her right knee giving out. The claimant walked with a cane, and clearly favored her left knee. A physical exam was positive for tenderness at the L4-L5 level. The claimant was instructed to continue physical therapy, with back exercises specifically added to her regiment, and to remain off work.

¶ 13 On April 26, 2007, the claimant was again examined by Dr. Nelson, who noted the claimant's continued complaints of low back pain, along with instability of the right knee. The claimant was given a cortizone injection and referred to Dr. Michael Maday for an additional evaluation. The following day, the claimant was seen at MercyWorks, where it was noted that she had low back pain, with spasms and numbness in the buttocks. A low back MRI was ordered, and medication and physical therapy was continued.

¶ 14 Dr. Maday first examined the claimant on May 1, 2007. He recommended a bone scan for both knees, and a different pain medication for the claimant's low back pain. A bone scan was performed on the claimant's knees on May 8, 2007. The results were sent to Drs. Maday and Dr. Nelson. Dr. Nelson discussed the results of those scans with the claimant on May 17, 2007. At that visit, the claimant complained of bilateral knee pain and low back pain. Dr. Nelson instructed the claimant to continue with physical therapy and prescribed an additional MRI for her low back. The record also indicates that later that same day, the claimant was seen at MercyWorks for physical therapy where she complained of radiating low back pain.

¶ 15 On June 7, 2007, MercyWorks physicians again recommended a low back MRI. On June 14, 2007, the claimant again saw Dr. Nelson. His treatment notes for that visit reported continued bilateral knee pain and low back pain radiating into the buttocks. Dr. Nelson recommended right knee surgery. On June 17, 2007, the MRI of the low back revealed a defect at L4-L5.

¶ 16 On June 22, 2007, the claimant was examined at the request of the employer by Dr. James Cohen.

¶ 17 On August 15, 2007, Dr. Nelson performed arthroscopic surgery on the claimant's right knee. A review of the operative report showed that the claimant had a tear of the posterior horn of the lateral meniscus. After surgery, the claimant returned to a regimen of physical therapy at MercyWorks and remained off work.

¶ 18 On October 18, 2007, the claimant reported weakness and pain in the left leg. Dr. Nelson prescribed a cortizone injection. Dr. Nelson diagnosed a probable meniscus tear of the left knee and ordered an MRI of the left knee, which was performed on November 2, 2007.

¶ 19 The claimant testified that she attempted to return to work on November 12, 2007. She further testified that she still had bilateral knee pain and was limping at work. She indicated that because she was limping at work, her supervisor instructed her to return to MercyWorks for further evaluation. On November 15, 2007, the claimant was evaluated by both MercyWorks and Dr. Nelson. Dr. Nelson reviewed the left knee MRI and recommended surgical intervention. Following this evaluation, the claimant was ordered off work.

¶ 20 On December 10, 2007, Dr. Nelson performed surgery on the claimant's left knee. Dr. Nelson's surgical notes recorded an obvious flap tear of the posterior horn of the medial

meniscus. Following surgery, the claimant again began a regimen of physical therapy and remained off work.

¶ 21 For the next seven months, the claimant continued to participate in physical therapy and remained under the care of Dr. Nelson. On July 10, 2008, Dr. Nelson's treatment notes reported that despite extensive therapy, the claimant still complained of left knee pain and pain in her groin. Dr. Nelson recommended that the claimant return to work and continue with a home exercise program.

¶ 22 The claimant returned to work on July 15, 2008. She testified that she continued to experience bilateral knee pain and low back pain while working. When she could no longer tolerate the pain, she returned to Dr. Nelson on May 14, 2009. Dr. Nelson's treatment notes confirmed that the claimant had not suffered any new injury since her last visit. However, the claimant continued to complain of bilateral knee pain and radiating low back pain. Dr. Nelson diagnosed radiculitis, prescribed pain medication and encouraged the claimant to continue her home exercise program.

¶ 23 On June 11, 2009, the claimant again sought treatment from Dr. Nelson. She reported radiating low back pain and left knee pain. At that visit, the claimant walked with the aid of a cane. Dr. Nelson's physical exam revealed a positive straight leg raise. He ordered a low back physical therapy program, a repeat low back MRI, medication and took the claimant off work.

¶ 24 Dr. Nelson's evidence deposition was admitted into evidence. Dr. Nelson confirmed that MercyWorks was the employer's occupational clinic. He testified that while the claimant complained of low back pain from the beginning of her treatment, the initial focus was on the right knee. Dr. Nelson also testified about the nature of individuals with multiple trauma.

Specifically, he testified that it is not uncommon for patients with multiple injuries to focus on the most acute and painful issues and not complain of other injuries that occurred at the time of the original injury until much later. Dr. Nelson opined that that the claimant's right knee injury was the predominate injury which overshadowed the other injuries.

¶ 25 Dr. Nelson further opined that the right and left knee injuries that necessitated surgical repair were a result of the March 2, 2007, work incident. The employer did not dispute the causal connection opinion for the right and left knees. The arbitrator found, therefore, that the claimant's condition of ill-being of both of her knees was causally related to her work injury of March 2, 2007.

¶ 26 Dr. Nelson reported that the claimant had complaints of back pain right after the accident of March 2, 2007. Dr. Nelson opined that the claimant's current low back condition was not related to her work activities in 2008 and 2009. Instead, Dr. Nelson opined that the claimant's initial low back complaints were related to the motor vehicle accident of March 2, 2007, but were merely temporary aggravations of an underlying degenerative process. Dr. Nelson further opined that the claimant's temporary aggravation of her degenerative low back condition had fully resolved by June 28, 2007. Dr. Nelson noted that he was the claimant's treater at the time and had direct conversations with the claimant concerning the condition of her low back at this time. He also had direct communications with the claimant again in July, 2008, when she saw him primarily for her knees. Dr. Nelson testified that he could not relate the claimant's back complaints of low back pain in 2008 and 2009 to her work injury of March 2, 2007.

¶ 27 On November 4, 2009, the petitioner's attorney sent her to Dr. Michel Malek for an examination. In direct contradiction to the opinion of Dr. Nelson, Dr. Malek opined that the

claimant's low back complaints in 2008 and 2009 were causally related to her work accident of March 2, 2007. However, Dr. Malek admitted that he did not review the medical records from Christ Hospital, nor did he review Dr. Nelson's deposition transcript. Dr. Malek also admitted that he "did not review all the totality of the record" nor did he review the MRI from the 2007 or 2009. Dr. Malek also acknowledged that he had not reviewed the entire treatment records nor had he reviewed all of objective testing records. Dr. Malek testified that he relied on Dr. Nelson's records, but interpreted those records to show that Dr. Nelson reported "severe" back pain. The arbitrator noted that Dr. Nelson's record only reported moderate back pain. The arbitrator found that Dr. Malek relied "solely" upon an alleged statement by the claimant to him that she had been severely symptomatic throughout this time period. The arbitrator noted that there was no other support in the record for a statement that the claimant suffered severe low back pain throughout the entire time of her treatment.

¶ 28 On June 12, 2010, the claimant was examined at the request of the employer by Dr. Sean Salehi. Dr. Salehi's report contains the statement: "I cannot say with a reasonable degree of medical certainty that her current lumbar complaints are related to the reported work injury." Dr. Salehi gave an evidence deposition in which he opined that the claimant gave indications of spinal pathology but he gave no opinion as to whether the claimant's lumbar complaints were causally related to the March 2, 2007, accident. Dr. Salehi testified that he had not reviewed all of the claimant's treatment records. Neither the Commission nor the arbitrator made reference to Dr. Salehi's testimony or report.

¶ 29 The arbitrator found that Dr. Nelson was in the best position to evaluate the condition of the claimant's low back in 2007 and 2008. The arbitrator found Dr. Nelson's opinion highly



credible and entitled to considerably more weight than Dr. Malek's opinion, which the arbitrator found to have little weight or credibility. The arbitrator found, therefore, that the claimant's condition of ill-being of her low back from the date of her March 2, 2007, work incident through June 28, 2007, was causally related to her work injury of March 2, 2007, but condition of ill-being of her low back after June 28, 2007, was not causally related to her work injury of March 2, 2007.

¶ 30 The claimant appealed the arbitrator's decision to the Commission. The Commission affirmed and adopted the decision of the arbitrator. The claimant then sought judicial review of the Commission's decision in the circuit court of Cook County, which affirmed the Commission's decision. This appeal followed.

¶ 31 ANALYSIS

¶ 32 The claimant maintains that the Commission erred in finding that her current condition of ill-being relating to her lower back was not causally related to the March 2, 2007, accident was against the manifest weight of the evidence. A claimant has the burden of proving by a preponderance of the credible evidence all the elements of his claim, including that any alleged condition of ill-being was causally related to an industrial accident. *Parro v. Industrial Comm'n*, 260 Ill. App. 3d 551, 553 (1993). Whether such a causal connection exists is a question of fact for the Commission to determine and its finding will not be overturned on appeal unless it is against the manifest weight of the evidence. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44 (1987). In resolving issues of fact related to causation, it is the Commission's exclusive province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine the relative weight to accord evidence, and to resolve conflicts in expert opinion testimony.

*Hostney v. Illinois Workers' Compensation Comm'n*, 39 Ill. App. 3d 665, 675 (2009). A court of review will not substitute its judgment for that of the Commission merely because other inferences may have been drawn or different weight accorded to the evidence. *Swartz v. Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086 (2005). Ultimately, the Commission's factual determinations must be upheld unless the opposite conclusion is clearly apparent. *Id.*

¶ 33 Here, the Commission adopted the arbitrator's conclusion that the claimant's current condition of ill being as it related to her lower back was not causally related to the March 2, 2007, accident based upon Dr. Nelson's opinion that the accident caused only a temporary aggravation of a degenerative condition. While Dr. Nelson's opinion was in direct conflict with Dr. Malek's, the Commission agreed with the arbitrator's conclusion that Dr. Malek's opinion was based upon statements made to him by the claimant which were not supported by the record.

¶ 34 The claimant maintains that it was against the manifest weight of the evidence for the Commission to rely upon Dr. Nelson's opinion regarding the causal relationship between the accident and her low back pain. The claimant maintains that it was reversible error for the Commission to reject Dr. Malek's opinion because he relied "solely" upon the claimant's statements regarding her low back pain. The claimant maintains that a review of Dr. Malek's records and deposition testimony would establish that he did not rely "solely" upon the claimant's statements to him. Thus, she argues, the Commission's disregard of Dr. Malek's opinion is erroneous. A review of the record, however, reveals that Dr. Malek's opinion that the claimant's lumbar pain was causally related to the accident is supported only by the claimant's statements to him regarding low back pain. Dr. Malek admitted that there were no recorded reports of low back pain between June 2007 and May 2009. Dr. Malek also admitted that there was no record

of the claimant receiving therapeutic or diagnostic treatment from low back pain during that same period. While Dr. Malek may have considered more than just the claimant's statements regarding her low back pain, his opinion that the claimant's current low back pain was causally related to the accident appears to be based only on the claimant's statements to him. Given the record, it is not against the manifest weight of the evidence for the Commission to reject Dr. Malek's opinion regarding causation.

¶ 35 The claimant next maintains that the Commission failed to address her argument that her work activities were contributing causative factors in her low back pain. *St. Elizabeth Hospital v. Workers' Compensation Comm'n*, 371 Ill. App. 3d 882 (2007) (employment need not be the sole cause of injury so long as it is a causative factor). Here the record supported a finding that the claimant's work activities were not contributing causative factors for her low back pain. Dr. Nelson opined that the claimant's current low back pain was the result of a degenerative process caused only by "her regular daily activities." The record also established that when Dr. Nelson was asked if the claimant's work activities contributed to the current condition of ill-being of her lower back, he opined that her work activities had no relationship to her current condition. The Commission chose to credit Dr. Nelson's opinion regarding causation, and there is nothing in the record to indicate that its decision to do so was against the manifest weight of the evidence.

¶ 36 The claimant finally maintains that the Commission's causation determination is against the manifest weight of the evidence where she established that she did not have any low back pain prior to the accident but immediately after the accident she reported low back pain which persisted thereafter. *Spector Freight Systems, Inc. v. Industrial Comm'n*, 93 Ill. 2d 507 (1983). The so-called chain of events analysis articulated in *Spector Freight* allows a claimant to

establish a causal connection between a current condition of ill-being and the accident where the condition did not exist prior to the accident but appeared and continued thereafter. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 593 (2005). In the instant matter, the record does not support the claimant's argument that she experienced low back pain on a continuing basis after the accident. While she reported some low back pain shortly after the accident, the record established that from June 28, 2007, through July 15, 2008, the claimant reported no back pain. Thereafter, from July 2008 until June 2009, there is nothing in the record to show that the claimant was treated for low back pain. Given this record, it cannot be said that the Commission's finding that the claimant's current condition of ill-being of the low back was not causally related to the March 2, 2007, accident was against the manifest weight of the evidence.

¶ 37 The claimant also maintains that the Commission erred in not awarding her temporary total disability benefits based upon a claim that her low back pain rendered her incapable of employment. Since this argument is based solely on the premise that the Commission's causation finding is erroneous, a premise we have rejected, we also reject this contention without further discussion. *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 436 (2011).

¶ 38 CONCLUSION

¶ 39 For the foregoing reasons, we affirm the judgment of the Cook County circuit court, which confirmed the Commission's decision.

¶ 40 Affirmed.