

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).

2012 IL App (2nd) 111099WC-U

Order filed November 6, 2012

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

JAMES KEEHN,)	Appeal from the Circuit Court
)	of the 17th Judicial Circuit,
Appellant,)	Winnebago County, Illinois.
)	
v.)	Appeal No. 2-11-1099WC
)	Circuit No. 11-MR-224
)	
THE ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION <i>et al.</i> (USF Holland,)	Eugene G. Doherty,
Appellee).)	Judge, Presiding.

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

ORDER

- ¶ 1 *Held:* The Commission's finding that the claimant did not prove an accidental injury arising out of his employment under a theory of repetitive trauma was not against the manifest weight of the evidence.
- ¶ 2 The claimant, James Keehn, filed an application for adjustment of claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2006)) seeking benefits for injuries to his left knee which he allegedly sustained while working for the respondent, USF

Holland (employer). After conducting a hearing, an arbitrator found that the claimant had failed to establish accidental injuries arising out of his employment under a theory of repetitive trauma and denied benefits.

¶ 3 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission). The Commission unanimously affirmed and adopted the arbitrator's decision.

¶ 4 The claimant sought judicial review of the Commission's decision in the circuit court of Winnebago County, which confirmed the Commission's decision. This appeal followed.

¶ 5 **FACTS**

¶ 6 The claimant worked for the employer as a truck driver for more than 20 years. In 2010, the claimant was approximately 5 feet 7 inches tall and weighed approximately 340 pounds.¹ In March 2007, the claimant filed the claim that is the subject of this appeal (Case No. 07 WC 10192), alleging a repetitive trauma to his left knee which manifested itself on April 5, 2006.

¶ 7 The claimant had suffered a prior injury to his left knee on January 24, 2004, when he walked into a hole while performing his job duties. At that time, Dr. Mark Hastings diagnosed a torn meniscus in the claimant's left knee. In March 2004, Dr. Hastings performed arthroscopic surgery and a partial medial meniscectomy on the claimant's left knee.² During the surgery, Dr.

¹ The claimant testified as to his current height and weight during the arbitration hearing in January 2010. He testified that he weighed as much as 360 pounds approximately two years before the hearing.

² A meniscus is a curved, fibrous cartilage in the knees and other joints. A partial medial meniscectomy is the surgical removal of part of the medial meniscus in the knee joint.

Hastings observed significant degenerative changes in the claimant's knee. The claimant was released to return to his regular work duties on April 23, 2004. He subsequently filed a workers' compensation claim for this injury (Case No. 04 WC 10545), which the claimant and the employer ultimately settled. The claimant's 2004 knee injury and the surgery to treat that injury are not the subject of the claim under review in this appeal.

¶ 8 The claimant continued working his regular job duties without undergoing additional treatment to his left knee until August 2005. From April 2004 through approximately April 2006, the claimant's regular route consisted of driving from Rockford, Illinois, to Saint Louis, Missouri, to Evansville, Indiana, and back to Rockford. He usually drove 53-foot tractors. The truck driven by the claimant had seven gears and required forceful clutching to switch between them. The claimant testified that the clutching required more force than did the clutch on a car. He estimated that, while driving from Rockford to St. Louis to Evansville, he had to forcefully depress the clutch at least 80 times per day. Although his route changed in 2007, the claimant testified that he had to press the clutch approximately 80 times per day during his new route as well. The claimant was also required to hitch and unhitch trailers and, at times, he had to climb over freight and move freight into and out of the trailer.

¶ 9 On August 26, 2005, the claimant returned to Dr. Hastings for an evaluation of his left knee. The claimant told Dr. Hastings that his knee was "giving way" occasionally and that he was having difficulty climbing into his truck³ and going up and down stairs. He also complained of pain in his left knee. Dr. Hastings opined that the claimant had reached MMI from his January

³ The claimant had to climb two steps to get into the cab of his truck. The first step was just below knee height, and the second step was approximately 18 inches above the first step.

2004 meniscal tear and subsequent arthroscopy. The doctor concluded that "[the claimant's] current symptoms are due to underlying osteoarthritis that pre-existed his meniscal tear and subsequent arthroscopy." He noted that the claimant was a "large individual" who was "not particularly active," and concluded that the "giving way" sensation in the claimant's left knee was "most likely due to some residual weakness relative to [the claimant's] size." Because he concluded that much of the claimant's knee pain was "due to the pre-existing osteoarthritis," Dr. Hastings noted that treatment options included steroid injections and nonsteroidal medications such as Ibuprofen. He also noted that losing weight would "certainly" help the claimant's knee pain, and he recommended that the claimant perform exercises at home. Dr. Hastings concluded that the claimant may require a total knee arthroplasty in the future if his osteoarthritis progresses. However, he noted that "[a]ny future nonsteroidal medication, steroid injection, or total knee replacement would be due to the underlying osteoarthritis and not due to the meniscal tear he incurred in January, 2004."

¶ 10 On March 17, 2006, the claimant returned to Dr. Hastings complaining of continued knee pain, swelling, and edema. He had difficulty going up and down stairs, and his knee was still "giving out." Dr. Hastings noted that the claimant was walking with a limp and was having difficulty getting up from a chair. The claimant questioned whether he should undergo knee replacement surgery. Dr. Hastings and the claimant discussed the fact that the claimant was overweight, and the claimant told Dr. Hastings that he had been trying to lose weight unsuccessfully. Dr. Hastings concluded that the claimant could continue to work without restrictions.

¶ 11 That same day, Dr. Hastings prepared a report to Traveler's Insurance. In the report, Dr. Hastings noted that the claimant had reached MMI for his medial meniscal tear to the left knee. He also noted that the claimant had a preexisting osteoarthritis in his left knee demonstrated by X-rays taken in August 2005, the MRI findings, and intraoperative findings in 2004. Dr. Hastings noted that "the findings of osteoarthritis are not related to [the claimant's] work injury." Although Dr. Hastings acknowledged that "a knee replacement might very well be in [the claimant's] future," he noted that he would encourage the claimant to exhaust nonsurgical options before undergoing surgery. The doctor stated that the claimant was at higher risk for loosening and polyethylene wear with a knee replacement because of his size and noted that the claimant could probably help his knee pain by losing weight. He also stated that he had "explained to the patient and his wife quite pointedly that any knee replacement surgery or other intervention for his osteoarthritis is not related to his work injury," and that he should therefore "channel this through his group insurance."

¶ 12 On April 5, 2006, the claimant saw Dr. Mark Carlson for evaluation of his left knee. He complained of left knee pain with weight bearing. X-rays of the left knee revealed end-stage osteoarthritis at the medial and patellofemoral compartment.⁴ The claimant underwent a steroid injection in the left knee joint.

¶ 13 The claimant continued to experience pain in his left knee, and he received additional steroid injections in May, June, and August 2006. By that time, Dr. Carlson had recommended a left knee replacement. The claimant agreed to undergo the procedure.

⁴ The medial compartment is the inner portion of the knee joint. The patellofemoral compartment is the area behind the kneecap.

¶ 14 On September 7, 2006, the claimant's counsel wrote to the employer's counsel demanding that the employer preapprove the claimant's left knee arthroscopy. Six days later, the employer's counsel wrote to the claimant's counsel and informed him that the employer would not approve the arthroscopy because: (1) Dr. Carlson had not concluded that the arthroscopy was related to the claimant's January 24, 2004, knee injury; and (2) on August 25, 2005, Dr. Hastings opined that the claimant had reached MMI as to his January 24, 2004, knee injury and that "any future treatment would be the result of the claimant's preexisting condition not the January 24, 2004, accident." The employer's counsel noted that any medical treatment after August 25, 2005, "has been denied and would continue to be denied." In addition, the employer's counsel communicated a final settlement offer for the January 24, 2004, injury of 20 percent loss of the use of the claimant's left leg.

¶ 15 On September 19, 2006, the claimant's counsel sent a letter to Dr. Carlson asking him to prepare a report that included his diagnosis of the claimant's January 24, 2004, work injury and his opinions as to "[t]he medical relationship between [the claimant's] condition of ill-being and the work-related injuries to his lower left extremity, if any." On November 16, 2006, Dr. Carlson issued a report outlining the claimant's treatment history and the doctor's diagnoses and conclusions as to the cause of his current left knee condition. In the report, Dr. Carlson opined that the claimant had "osteoarthritis of his left knee, which was complicated by an injury on 1/24/04 which led to arthroscopic intervention for a meniscus tear with underlying osteoarthritis." He further stated that:

"it appears from review of the patient's chart that the injury he sustained in the past was confined to the meniscus and subsequently was not causative

for his osteoarthritis, which is the indication for his total knee replacement.

The chronic lower extremity edema and degenerative changes of his foot also are a non-work-related condition."

¶ 16 On March 1, 2007, lump sum settlement contracts were approved for the claimant's previous pending case against the employer for the meniscal tear he suffered on January 24, 2004, and the subsequent arthroscopy and meniscectomy (Case No. 04 WC 10545). The claimant settled that case for 20 percent loss of the use of his left leg.

¶ 17 On the same day, the claimant signed the "Application for Adjustment of Claim" in Case No. 07 WC 10192, alleging a repetitive trauma injury to his left knee with an accident date of August 13, 2004. He later filed an amended claim alleging an accident date of April 5, 2006.

¶ 18 On August 8, 2007, Dr. Jeffrey Coe performed an independent medical examination of the claimant at the claimant's counsel's request. At that time, Dr. Coe prepared a report in which he opined that "there is a causal relationship between the injuries suffered by [the claimant] at work for [the employer] (Dates of Accident: January 24, 2004, left knee; January 17, 2007, left shoulder) and his current symptoms and state of impairment." He recommended left knee replacement surgery.

¶ 19 On November 30, 2007, Dr. Coe authored another report at the request of the claimant's counsel. In this report, Dr. Coe opined that "there is a causal relationship between [the claimant's] physical activities at work for [the employer] after his discharge from Dr. Hastings in late August 2005, and his ongoing left knee symptoms and the recommendation for left total knee replacement by Dr. Carlson."

¶ 20 On December 17, 2007, Dr. Carlson reviewed an X-ray performed on November 26, 2007, and noted end-stage medial compartment arthrosis in the claimant's left knee. Dr. Carlson prescribed a total knee replacement. On February 20, 2008, the claimant returned to Dr. Carlson complaining of left knee pain with weight bearing and when pushing the clutch on his truck. He underwent another steroid injection in his knee and was taken off work. Eight days later, an MRI revealed medial compartment arthrosis and degenerative medial meniscal tear. On March 18, 2008, the claimant underwent a unicompartmental left knee replacement.

¶ 21 On May 1, 2008, the claimant saw Dr. Kevin Walsh at the employer's request for a Section 12 examination. After examining the claimant and reviewing the claimant's medical records, Dr. Walsh prepared a written report in which he opined that the claimant's need for knee replacement surgery in 2007 was caused by his preexisting, degenerative osteoarthritis, and not by the January 24, 2004, work accident or by any repetitive trauma. Dr. Walsh noted that the 2004 X-rays revealed preexisting osteoarthritis in the claimant's left knee, and he agreed with Dr. Hastings' conclusion that any future medical intervention was likely due to that underlying osteoarthritis. Accordingly, Dr. Walsh concluded that the January 2004 injury "did not cause [the claimant's] osteoarthritis nor it is likely to have accelerated or aggravated the preexisting osteoarthritis."

¶ 22 Moreover, Dr. Walsh disagreed with Dr. Coe's opinion that there was a causal relationship between the claimant's physical activities at work and his ongoing left knee symptoms and the recommendation for a left knee replacement. Dr. Walsh concluded that there is "no evidence" in the claimant's medical records that the claimant suffered from repetitive trauma or that his job duties aggravated or accelerated his preexisting condition or caused or

contributed to the need for knee replacement surgery. He opined that the claimant's osteoarthritis was likely aggravated by the claimant's "morbid obesity." However, he disagreed with Dr. Coe's opinion that the claimant's osteoarthritis was aggravated by his work activities. Dr. Walsh concluded that Dr. Coe's opinion was "not supported" by the medical records.

¶ 23 During his subsequent evidence deposition, Dr. Walsh admitted on cross-examination that the work activities performed by a truck driver who unloads freight (such as carrying heavy objects, pushing and pulling freight, and dragging pallets) might "possibly" aggravate an underlying osteoarthritic condition. However, he repeatedly stated that there was no evidence that the claimant's work activities, either alone or in combination, caused, aggravated, or accelerated his osteoarthritis.

¶ 24 The claimant was discharged from orthopedic care on June 30, 2008, and returned to work without restrictions on July 1, 2008. He returned to Dr. Carlson on November 12, 2008, complaining of left knee pain with weight bearing for the past several days. The claimant reported difficulty getting in and out of his truck, pain with activity, and swelling. He was diagnosed with osteoarthrosis, synovitis, tendinitis, and bursitis. He underwent another injection and was taken off work. The medical record indicates that, "down the road," the claimant will need a total knee arthroplasty as a result of his arthrosis.

¶ 25 The claimant returned to work full duty on November 17, 2008. He continued to perform his regular job duties until he retired on July 30, 2009.

¶ 26 During the arbitration hearing, the claimant testified that he continues to experience pain in his left knee when he walks and instability when he gets up from a sitting position. He stated

that he has difficulty climbing stairs and that he continues to experience swelling. He testified that he would like to get a total knee arthroplasty as prescribed by Dr. Carlson.

¶ 27 The arbitrator found that the claimant had failed to prove that he sustained an accident which arose out of and in the course of his employment on April 5, 2006. The arbitrator noted that both of petitioner's treating physicians (Drs. Hastings and Carlson) opined that the claimant's current condition of ill-being and need for a knee replacement were due to the petitioner's underlying osteoarthritic condition rather than to the January 24, 2004, work accident, and that both doctors were "silent regarding causation due to a repetitive trauma injury." Moreover, the arbitrator noted that Dr. Walsh opined that the claimant's knee condition was "not work related."

¶ 28 The arbitrator acknowledged that Dr. Coe opined that the claimant's current condition of ill-being was causally related to his work activities. However, the arbitrator found Dr. Coe's credibility to be questionable for two reasons. First, the arbitrator noted that:

"Dr. Coe initially opined that the claimant's left knee condition and the need for ongoing medical treatment was related to the January 24, 2004 accident, which had already been settled. Upon discovering the error, Dr. Coe issued an addendum report causally relating Petitioner's current condition of ill being to his work activities."

Second, the arbitrator found that Dr. Coe "did not have an accurate description of [the claimant's] job duties" when he rendered his causation opinion. In support of this finding, the arbitrator noted that, during his deposition, Dr. Coe "admitted that he did not know how much freight [the claimant] moved, whether he used a pallet jack, how many miles he drove, or how many times he had to shift gears per shift."

¶ 29 Accordingly, the arbitrator adopted the opinions of Drs. Hastings, Carlson, and Walsh, rejected Dr. Coe's opinion, and found that the claimant had failed to establish an accidental injury caused by a repetitive trauma. The arbitrator dismissed as moot all of the other issues raised by the claimant.

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

¶ 31 ANALYSIS

¶ 32 The claimant argues that the Commission's conclusion that he failed to prove an accidental injury arising out of his employment under a theory of repetitive trauma was against the manifest weight of the evidence. We disagree.

¶ 33 The claimant in a worker's compensation proceeding has the burden of proving by a preponderance of the credible evidence that the injury arose out of and in the course of employment, and that involves as an element a causal connection between the accident and the condition of claimant. *Paganelis v. Industrial Comm'n*, 132 Ill. 2d 468, 480 (1989). An injury is considered "accidental" for purposes of worker's compensation if it is caused by the performance of a claimant's job, even though it develops gradually over a period of time as a result of repetitive trauma. *Peoria County Belwood Nursing Home v. Industrial Comm'n*, 115 Ill. 2d 524, 529-30 (1987); *Fierke v. Industrial Comm'n*, 309 Ill. App. 3d 1037, 1040 (2000). An employee who alleges injury based on repetitive trauma must meet the same standard of proof of other workers' compensation claimants alleging "accidental injury"; there must be a showing that the

injury is work-related and not a result of the normal degenerative aging process. *Peoria County Belwood*, 115 Ill. 2d at 530.

¶ 34 Aggravation or acceleration of a preexisting condition is recoverable unless the employee's health has deteriorated to the point that any normal daily activity is an overexertion or the activity engaged in presented no greater risks to the employee than those to which the general public is exposed. *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36 (1982); *Cassens Transport Co., Inc. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 331 (1994). To be recoverable, the claimant's work-related injury need not be the sole factor that aggravates a preexisting condition, as long as it is a factor that contributes to the disability. *Azzarelli Construction Co. v. Industrial Comm'n*, 84 Ill. 2d 262, 267 (1981); *Cassens Transport*, 262 Ill. App. 3d at 331.

¶ 35 The existence of accidental injury arising out of and in the course of employment is a question of fact for the Commission. *Cassens Transport*, 262 Ill. App. 3d at 331. Thus, where the claimant alleges accidental injuries caused by a repetitive trauma, it is for the Commission to determine whether a claimant's disability is attributable solely to a degenerative condition or to an aggravation of a preexisting condition due to a repetitive trauma. *Id.* It is also the Commission's province to judge the credibility of witnesses, to determine the weight to be given to their testimony, to resolve conflicts in the evidence, and to choose among conflicting inferences. *Williams v. Industrial Comm'n*, 244 Ill. App. 3d 204, 209 (1993); *Fierke*, 309 Ill. App. 3d at 1039. We may overturn the Commission's factual determinations only when they are against the manifest weight of the evidence (*Williams*, 244 Ill. App. 3d at 210), *i.e.*, only when

the opposite conclusion is clearly apparent (*Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 539 (2007)).

¶ 36 Applying these standards, we cannot conclude that the Commission's finding that claimant failed to establish accidental injuries arising out of his employment was against the manifest weight of the evidence. It is undisputed that the claimant suffered from degenerative osteoarthritis in his left knee which his doctors diagnosed in early 2004. In August 2005, Dr. Hastings opined that the symptoms that the claimant was experiencing at that time (left knee pain and swelling, difficulty climbing into his truck, and occasional "giving way" of the knee) were "due to underlying osteoarthritis that pre-existed" his January 2004 work injury. Dr. Hastings noted that the claimant could help alleviate his knee pain by losing weight and concluded that the "giving way" sensation in the claimant's left knee was most likely due to the claimant's weight. He further opined that that "[a]ny future nonsteroidal medication, steroid injection, or total knee replacement would be due to the underlying osteoarthritis" and not to his January 2004 work injury. When the claimant returned to Dr. Hastings complaining of similar symptoms in March 2006—one month before the claimed manifestation date of his alleged repetitive trauma—Dr. Hastings reiterated that the claimant's osteoarthritis was not related to his January 2004 work injury and that any future knee replacement or other intervention to treat his osteoarthritis would not be work related.

¶ 37 On September 19, 2006, the claimant's counsel asked Dr. Carlson to render an opinion as to "[t]he medical relationship between [the claimant's] condition of ill-being and the work-related injuries to his lower left extremity, if any." On November 16, 2006, more than seven months after the claimed manifestation date of the claimant's repetitive trauma, Dr. Carlson

opined that the claimant needed a left knee replacement due to his preexisting osteoarthritis, which was not caused by his prior work injury. Dr. Carlson also concluded that the claimant's chronic lower extremity edema and degenerative changes of his foot were also "non-work-related" conditions.

¶ 38 Accordingly, neither of the claimant's treating physicians opined that the claimant's need for a knee replacement or his symptoms of pain, swelling, and instability in his left knee were causally related to his job activities. To the contrary, both opined that those symptoms were due primarily, if not exclusively, to the claimant's preexisting, degenerative osteoarthritis. Moreover, neither doctor suggested that the claimant's osteoarthritis was aggravated or accelerated by the claimant's work activities.

¶ 39 In addition, Dr. Walsh opined that the claimant's need for knee replacement surgery in 2007 was caused by his preexisting, degenerative osteoarthritis, and not by any repetitive trauma. Dr. Walsh concluded that there is no evidence that the claimant suffered from repetitive trauma or that his job duties aggravated or accelerated his preexisting osteoarthritis. Although Dr. Walsh admitted on cross-examination that some of the work activities performed by the claimant could "possibly" aggravate an underlying osteoarthritic condition, he repeatedly stated that there was no evidence in this case that the claimant's work activities, either alone or in combination, caused, aggravated, or accelerated his osteoarthritis.

¶ 40 Although Dr. Coe opined that there was a causal relationship between the claimant's left knee condition and his work activities after his discharge from Dr. Hastings in August 2005, the Commission found Dr. Coe's opinion less credible than the opinions of Drs. Hastings, Carlson, and Walsh. As the Commission correctly noted, Dr. Coe initially opined that the claimant's knee

condition was causally related to his January 24, 2004, work accident, which had already been settled by the parties. However, at the request of the claimant's counsel, Dr. Coe issued another report. That amended report linked the claimant's knee condition and need for knee replacement surgery to his work activities after August 2005 and omitted all reference to the January 24, 2004, accident. It is the Commission's function to assess the credibility of witnesses and to resolve conflicts in medical opinion evidence. *Williams v. Industrial Comm'n*, 244 Ill. App. 3d 204, 209 (1993); *Fierke*, 309 Ill. App. 3d at 1039. Under these circumstances, the Commission's decision to credit Dr. Walsh's opinion and the opinions of the other doctors over Dr. Coe's opinion was not against the manifest weight of the evidence.

¶ 41 As the claimant notes, he testified that he performed several repetitive work tasks, including depressing the clutch on his truck approximately 80 times per day and moving freight. He also testified that, although his knee pain and other symptoms initially improved after his arthroscopic surgery and partial meniscectomy in March 2004, these symptoms returned during the performance of his work duties, eventually worsening to the point that he was unable to depress a clutch. However, this testimony merely establishes that the claimant felt increased pain while performing his job duties over time; it does not prove that his deteriorating knee condition was caused or aggravated by his work activities. In fact, the claimant's testimony is entirely consistent with Dr. Walsh's conclusion that the claimant's knee symptoms were caused by the natural progression of his osteoarthritis which was aggravated by his obesity. Moreover, although the claimant's symptoms may have become more severe and debilitating over time, he complained of the same types of symptoms (*e.g.*, pain, swelling, instability, difficulty going up and down stairs) continually from August 2005 through the arbitration hearing. This arguably

further supports the conclusions of Drs. Walsh, Hastings, and Carlson, each of whom opined that the claimant's increasing symptoms were the result of the claimant's preexisting condition, which was degenerative.

¶ 42

CONCLUSION

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

¶ 44 Affirmed.