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2014 IL App (2nd) 130458WC-U

Order filed June 20, 2014

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

MARIA ALMANZA,)	Appeal from the Circuit Court
)	of the Sixteenth Judicial Circuit,
)	Kane County, Illinois
Appellant,)	
)	
v.)	Appeal No. 2-13-0458WC
)	Circuit No. 12-MR-501
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION <i>et al.</i> (Armour-Eckrich Meats-)	Honorable
John Morrell Meats, Appellees).)	David R. Akemann,
)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The Commission's finding that the claimant's current condition of ill-being was not causally related to her employment and its finding that she was not entitled to prospective medical expenses were not against the manifest weight of the evidence. The Commission did not abuse its discretion in admitting evidence of the claimant's access to group medical insurance.

¶ 2 The claimant, Maria Almanza, filed a claim against Armour-Eckrich Meats-John Morrell Meats (the employer) under the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)) alleging bilateral shoulder injuries arising out of and in the course of her

+employment on April 6, 2009. Following a hearing, the arbitrator found that the claimant had sustained accidental injuries to both her shoulders arising out of and in the course of her employment on April 6, 2009. The arbitrator further found that the claimant's current condition of ill-being relating to both shoulders was no longer causally related to the April 6, 2009, accident. Additionally, the arbitrator found that the claimant had reached maximum medical improvement (MMI) and was no longer entitled to further medical treatment to either shoulder.

¶ 3 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission), arguing that the arbitrator erred in finding that she had reached MMI and that her current condition of ill-being was no longer caused by the industrial accident on April 6, 2009. The Commission unanimously affirmed the arbitrator's decision. The claimant then sought judicial review of the Commission's decision in the circuit court of Kane County, which confirmed the Commission's ruling. This appeal followed.

¶ 4 **FACTS**

¶ 5 On April 6, 2009, the claimant was working as a poly clip operator when she noticed that both her shoulders were sore and painful. She advised the safety coordinator, E.J. Klages, who provided her with ibuprofen and ointment. The claimant continued to work without further incident until August of the following year (2010), when she again notified Klages of increased bilateral shoulder pain. During the period prior to April 6, 2009, and during the period up to August 2010, the claimant worked as a poly clip operator and as a slicer. The job duties of the clip operator included placing small metal clips on finished meat product as it comes off an automated line and periodically reloading those clips into the machine. Reloading clips required repetitive reaching above the shoulders with both hands. As a slicer, the claimant's job duties

included loading sausages weighing 10 to 12 pounds into a machine. Both jobs involved some degree of upper extremity motion.

¶ 6 On August 12, 2010, the claimant sought treatment from Dr. Robert Long at Tyler Medical Services, the employer's contracted medical provider. The claimant reported neck and bilateral shoulder pain which she attributed to her job responsibilities. The claimant did not report a specific injury or trauma. She reported intermittent pain during the previous year and she noted that the pain had increased in intensity and frequency in the previous eight months since she started working as a slicer. The claimant reported no numbness, tingling, radiating pain, or noticeable weakness. Rather, she noted pain in her cervical spine and right shoulder, with a lesser degree of pain in her left shoulder. Dr. Long ordered diagnostic tests which revealed no apparent abnormalities. He observed decreased range of motion in subjective testing. Dr. Long prescribed physical therapy and pain medication and ordered the claimant be placed on light-duty restrictions which included no above the shoulder reaching or lifting, no push or pull movement with the right arm, and no lifting more than five pounds with the right hand. The claimant returned to work where the employer accommodated the light-duty restrictions.

¶ 7 On August 20, 2010, the claimant again sought treatment from Dr. Long. She reported no improvement since her last evaluation. She described her pain as a 5 out of a possible 10 and reported that her pain increased following any activity. Dr. Long increased the strength of the claimant's prescribed pain medication, recommended continuation of physical therapy and home exercises and ordered the claimant's work restrictions to remain in effect. The claimant was also instructed to return for evaluation after four physical therapy sessions.

¶ 8 On September 1, 2010, the claimant was again examined by Dr. Long. The claimant reported that the physical therapy sessions had provided only minimal relief and that her work duties, even within work-restriction accommodations, continued to cause her bilateral shoulder pain. Dr. Long consulted with the physical therapist who informed him that the claimant had not met any treatment goals and had shown no significant improvement. Dr. Long recommended that the claimant continue with physical therapy and that her progress be monitored.

¶ 9 On September 15, 2010, the claimant sought treatment from Dr. Jeffrey Grosskopf at Fox Valley Orthopedics. The record indicates that there was no referring physician. The claimant gave a history of right shoulder pain beginning in April 2009 and left shoulder pain in January 2010. Dr. Grosskopf noted limited range of motion in the right shoulder and opined that the claimant suffered bilateral impingement that was likely related to the claimant's employment. He prescribed pain injections and told the claimant to continue under Dr. Long's work restrictions for two weeks after which he would reevaluate her condition.

¶ 10 On September 27, 2010, the claimant was again examined by Dr. Grosskopf. The claimant reported no relief from the pain injections. She also reported increased pain in her left shoulder due to using the left arm more to compensate for the increased right shoulder pain. She reported tolerating work duties within the prescribed restrictions. Dr. Grosskopf ordered her to remain under those restrictions.

¶ 11 On October 19, 2010, an MRI was administered on each shoulder at the request of Dr. Grosskopf. The right shoulder imagery revealed rotator cuff damage including a torn tendon, cyst formation, and a small amount of joint effusion. The left shoulder imagery also revealed a partial tear of the supraspinatus tendon.

¶ 12 On October 23, 2010, the claimant was examined at the request of the employer by Dr. Mark Levin. Dr. Levin also reviewed the MRI results. He opined that the claimant's symptoms were consistent with rotator cuff pathology. He recommended further treatment including right shoulder arthroscopy, arthroscopic rotator cuff repair surgery, subacromial decompression and distal clavicle excision. For the left shoulder, Dr. Levin recommended continued pain injections and physical therapy, noting that if her condition did not improve after those measures, surgical intervention might be necessary at a later date.

¶ 13 Dr. Levin was unable to provide a definitive opinion as to the cause of the claimant's bilateral shoulder pathology without first viewing a video of her job functions and activities. After being provided a video by the employer, Dr. Levin issued a report on December 3, 2010, in which he opined that the claimant's rotator cuff injuries were not caused by the claimant's work activities. He noted, however, that it was possible that the claimant's work activities could have aggravated a preexisting shoulder pathology which could have caused her condition to become more symptomatic.

¶ 14 On October 27, 2010, the claimant again treated with Dr. Grosskopf. The claimant reported pain in both shoulders when she lifted her arms above her body. She also reported pain in both shoulders at night when she attempted to sleep. Dr. Grosskopf observed that physical therapy, conservative treatment and pain medication had failed to alleviate the claimant's condition. Dr. Grosskopf recommended right shoulder surgery and told the claimant to limit left shoulder use or she would need similar surgery at a later date. The claimant agreed with Dr. Grosskopf's recommendation of right shoulder surgery. She continued to work within her light-duty restrictions until the day of surgery.

¶ 15 On January 20, 2011, Dr. Grosskopf performed right shoulder surgery. The postoperative diagnosis was 20% undersurface supraspinatus tendon tear with chronic impingement syndrome. Dr. Grosskopf characterized a 20% tear as "minor." He placed the claimant on complete work restriction during a period of postoperative recovery. The claimant began a program of postoperative physical therapy on January 24, 2011, which included three sessions per week for eight weeks.

¶ 16 Dr. Grosskopf conducted examinations on January 28, 2011, February 25, 2011, and March 24, 2011, to monitor the claimant's postoperative progress. The claimant reported continued pain during the postoperative recovery period. Dr. Grosskopf was concerned about elbow pain developing during the recovery period so he instructed the claimant on the use of an elbow brace band. Otherwise, he observed that the claimant's postoperative recovery was progressing satisfactorily but could be expected to take some time.

¶ 17 On May 5, 2011, the claimant was examined by Dr. Grosskopf's physician's assistant, Cassie Mandala. The claimant reported continued pain and sensitivity in the right shoulder. Ms. Mandala observed a decreased range of motion possibly related to mild degenerative disc disease. The claimant remained on a total work restriction.

¶ 18 On May 17, 2011, the claimant completed her initial four week physical therapy regimen. Dr. Grosskopf prescribed an additional four weeks of therapy. The following day, the claimant was again examined by Ms. Mandala. The claimant reported that her right shoulder pain was increasing despite physical therapy. She reported that activities of daily life were causing increasing right shoulder pain. The claimant was given pain injections, told to continue physical therapy and had her total work restriction extended.

¶ 19 On June 15, 2011, the claimant returned to Fox Valley Orthopedics where she was examined by Ms. Mandala and Dr. Vishal Mehta. The claimant still complained of increasing right shoulder pain. Treatment notes completed by Ms. Mandala indicated the claimant's symptoms were "possibly a combination of AC pain, adhesive capsulitis and possibly an impingement syndrome." Diagnostic tests were ordered. The claimant was kept off from work, but physical therapy was discontinued. On July 20, 2011, an arthrogram test was administered.

¶ 20 On August 4, 2011, Dr. Mehta examined the claimant and reviewed the arthrogram results. He noted that the claimant complained of significant right shoulder pain, however he could find no objective manifestations in the right shoulder area. Dr. Mehta wrote in his treatment notes that "it is difficult to tell exactly what the etiology of this pain is." He noted tenderness in the AC joint and positive signs of impingement. He prescribed a cortisone injection into the right shoulder "under the assumption that it is continued inflammation in her subacromial space causing her problems." Dr. Mehta observed that if the injection did not relieve the pain then it would be necessary to perform another right shoulder arthroscopy to look for possible causes of her pain.

¶ 21 On September 13, 2011, the claimant was again examined at the request of the employer by Dr. Levin. He observed that the right shoulder surgery had provided no relief. He further observed that extensive preoperative and postoperative physical therapy had been unsuccessful as had cortisone injections. After examining the claimant and reviewing the extensive medical treatment records, Dr. Levin noted that that the claimant's subjective complaints of pain were not consistent with any objective indicators. He observed that the claimant had undergone surgery which successfully repaired a 20% tear yet she reported no improvement at all. He questioned the veracity of the claimant's pain reports. He opined that the claimant was at MMI and that no

additional medical intervention would relieve her subjective complaints of right shoulder pain. Regarding the left shoulder, Dr. Levin opined that, based upon the complete lack of improvement following surgery on the right shoulder he had concerns that any surgery on the left shoulder would be unproductive. He recommended a functional capacity evaluation (FCE) with validity testing.

¶ 22 On December 2, 2010, Dr. Levin issued an addendum report in which he noted that additional diagnostic testing had revealed the rotator cuff surgery had been successful. He remained of the opinion that the claimant had reached MMI regarding her right shoulder and that further medical intervention was not warranted based only on the claimant's subjective complaints.

¶ 23 On January 10, 2012, Dr. Levin issued a second addendum report in which he reiterated that the claimant was at MMI regarding her right shoulder. In this report, Dr. Levin opined that the claimant was at MMI regarding her left shoulder as well. He reiterated that he did not believe that the claimant's subjective complaints of pain were consistent with objective findings. He opined that additional medical services for the claimant were not necessary and that the claimant "should be capable of working, but that she has marked subjective complaints of pain out of proportion to the objective findings which she states limits her abilities." Dr. Levin recommended that the claimant undergo the FCE that he had previously recommended to determine what, if any, factors prevented her from returning to her former job duties. He opined that, as of September 13, 2011, the claimant was objectively capable of performing work activities, and that only her unsupported subjective complaints prevented her from resuming employment.

¶ 24 The claimant testified that her right shoulder pain prevented her from working or completing any activities of daily living.

¶ 25 Ms. Klages testified, over objection, that the claimant had access to group medical insurance. She also testified that light-duty employment was available for the claimant at the time of the hearing.

¶ 26 The arbitrator found that claimant had suffered an accidental injury arising out of and in the course of her employment on April 6, 2009, the date she reported the incident of bilateral shoulder pain while working. Specifically, the arbitrator found that, on that date, the claimant's work duties aggravated her bilateral shoulder impingement syndrome. He noted that the surgery to her right shoulder was "minor" according to Dr. Grosskopf and appeared to be successful according to Dr. Levin's medical opinion. Based upon Dr. Levin's observations of the disparity between the claimant's subjective complaints and the objective indicators, the arbitrator noted that the claimant's subjective complaints of pain, standing alone, did not establish a causal connection between her current alleged condition of ill-being and her employment. The arbitrator further noted that there was no medical opinion testimony supporting the conclusion that the claimant's current condition of ill-being was causally related to her employment. The arbitrator observed that one of the claimant's treating physicians, Dr. Mehta, stated that he did not know the etiology of the claimant's postoperative pain. In contrast, Dr. Levin opined that the claimant's subjective complaints of pain had no objective basis, and that her current condition of ill-being, specifically postoperative pain in the right shoulder and subjective pain in the left shoulder, was no longer attributable to her work related accident. The arbitrator found that the claimant had reached MMI as of September 13, 2011.

¶ 27 Since the arbitrator determined that the claimant had failed to establish that her current condition of ill-being was causally related to her employment, he denied her claim for any additional medical treatment.

¶ 28 The claimant appealed the arbitrator's decision to the Commission, which unanimously affirmed and adopted the arbitrator's award. The claimant then sought judicial review of the Commission's decision in the circuit court of Kane County, which confirmed the Commission's ruling. The claimant then filed a timely appeal to this court.

¶ 29 **ANALYSIS**

¶ 30 1. Causation

¶ 31 On appeal, the claimant first maintains that the Commission erred in finding that she failed to establish that her current condition of ill-being was causally related to her employment. Under the Act, a compensable injury is one that both "arises out of" and "in the course of" a claimant's employment. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). An injury is said to arise out of one's employment when there is a causal connection between the employment and the injury, *i.e.*, the origin or cause of the current condition of ill-being must be attributable to some risk connected with the claimant's employment. *Id.* at 676. Whether the claimant's current condition of ill-being is causally related to his or her employment is generally a question of fact and this court will not reverse the Commission's causation determination unless it is against the manifest weight of the evidence. *R&D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 868 (2010). For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent from the record on appeal. *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297 (2009).

¶ 32 Here, the Commission's finding that the claimant failed to establish a causal connection between her current condition of ill-being and her employment was not against the manifest weight of the evidence. It is well-settled that causation can be established by medical opinion testimony or by a chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability. See *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63-64 (1982). In the instant matter, the Commission relied upon the medical opinion testimony of Dr. Levin, who opined that the claimant's current condition of ill-being was not causally related to her employment. Dr. Levin's opinion was supported by his observation that the claimant's complaints of pain after her surgery were not consistent with objective indicators. He noted that the claimant's surgery should have alleviated some, if not all, of her pain and he was clearly suspicious of the claimant's reports of *increasing* pain and *decreasing* mobility after what, by all accounts, was a successful operation.

¶ 33 The claimant maintains that the Commission erred when it failed to allow an inference of causation to be made from the chain of events of symptoms following an industrial accident. She points to *Kawa v. Illinois Workers' Compensation Comm'n*, 2013 IL App. (1st) 120469WC wherein this court reversed the Commission's finding that the claimant had failed to establish causation through the chain of events test. We find *Kawa* to be distinguishable from the instant matter. In that case, the issue was whether the claimant's current level of pain was the result of psychological or physical trauma related to a work injury. We found that the distinction was not relevant to the issue of causation and reversed the Commission. *Kawa*, at ¶ 87. Here, the issue is whether the claimant's subjective complaints of pain, standing alone, are sufficient to establish a causal connection with her employment. Based upon the medical evidence, the Commission found that the claimant's complaints of continued pain after surgery were, more likely than not,

not valid. Had the Commission found that the claimant's complaints of pain were valid it *could* have made an inference under the chain of events theory that the pain which continued to persist after the surgery was causally related to the claimant's employment. However, the Commission's finding that the medical evidence outweighed the permissible inference under the chain of events theory cannot be said to be contrary to the manifest weight of the evidence.

¶ 34 2. Availability of Group Insurance

¶ 35 The claimant next argues that the Commission abused its discretion when it permitted the employer to present evidence that the claimant had access to its group medical plan and could have had treatment paid for under that plan. She points to *Plantation Manufacturing v. Industrial Comm'n*, 294 Ill. App. 3d 705, 712 (1998) for the proposition that "an injured worker's ability to pay for medical care personally or through health insurance is not relevant to an employer's obligation to pay for medical care."

¶ 36 We find that the claimant's reliance upon *Plantation Manufacturing* is misplaced. Here, the Commission did not rely upon the testimony to determine whether the employer was obligated to pay for the claimant's medical care. Rather, evidence of availability of group medical insurance was relevant to the issue of the claimant's credibility in testifying that she had no other means to pay for medical procedures to relieve her pain. In point of fact, since the Commission determined that the employer was not obligated to pay for the claimant's medical care since she had failed to establish that her need for further medical care was causally related to her employment, the availability of group medical insurance had no relevance to the Commission's decision.

¶ 37 3. Prospective Medical Expenses

¶ 38 The claimant lastly maintains that the Commission erred in not awarding her prospective medical expenses for her left and right shoulder conditions. This claim is based upon an assumption that the Commission erred in its causation finding. A claimant is entitled to recover only reasonable and necessary medical expenses that are causally related to a work accident and that are determined to be required to diagnose, relieve, or cure the effects of a work related injury. *Homebrite Ace Hardware v. Industrial Comm'n*, 351 Ill. App. 3d 333 (2004).

¶ 39 Here, the Commission determined that the claimant's current condition of ill-being relative to both her right and her left shoulder are not causally related to a work related injury. Thus, the Commission did not err in denying her claim for prospective medical care.

¶ 40 **CONCLUSION**

¶ 41 For the foregoing reasons, the judgment of the circuit court of Kane County, which confirmed the Commission's ruling is affirmed, and the matter is remanded to the Commission for further proceedings regarding the nature and extent of claimant's permanent injuries, if any.

¶ 42 Affirmed and remanded.