

Workers' Compensation
Commission Division
Filed: March 2, 2012

No. 3-11-0366WC

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

WERNER ENTERPRISES,) APPEAL FROM THE
) CIRCUIT COURT OF
Appellant,) WILL COUNTY
)
v.) No. 10 MR 1061
)
ILLINOIS WORKERS' COMPENSATION)
COMMISSION, et al.,)
(Teri Cornwall,) HONORABLE
) BARBARA N. PETRUNGARO,
Appellees).) JUDGE PRESIDING.

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

ORDER

Held: The Commission's finding that the claimant's back condition of ill-being is causally related to her fall at work is not against the manifest weight of the evidence.

¶ 1 Werner Enterprises (Werner) appeals from a judgment of the Circuit Court of Will which confirmed a decision of the Illinois Workers' Compensation Commission (Commission), awarding the claimant, Teri Cornwall, benefits pursuant to the Workers' Compensation Act

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(Act) (820 ILCS 305/1 et seq. (West 2006)), for injuries she sustained to her wrist, elbow and back on April 6, 2007, while working for Werner. For the reasons which follow, we affirm.

¶ 2 The following factual recitation is taken from the record of the arbitration hearing held on November 25, 2009, as well as the remainder of the record on appeal.

¶ 3 The claimant, a former truck driver for Werner, testified that, on April 6, 2007, she slipped while alighting from her truck, fell to the ground, and injured her right wrist as well as her "elbow, and [her] shoulder and then the right side of [her] hip and leg." She later underwent several surgical procedures to repair her wrist and was unable to work in the time near those procedures. She also underwent procedures to repair her elbow, which had bone fragments following her fall.

¶ 4 The claimant testified that, following her wrist and elbow procedures, she returned to work in November 2008, but she noticed pain and numbness in both of her wrists and hands with two to three weeks of her return to work. As a result of that problem, which the claimant testified was diagnosed as carpal tunnel syndrome, the claimant was taken off of work on May 4, 2009. She did not return to work for Werner after that date.

¶ 5 Aside from her wrist and arm complaints, the claimant said that she also has experienced problems with her hip and back "[f]rom day one." She said she noticed her back pain following her first, April 2007, wrist surgery, after she decreased her dosage of pain medication. The claimant testified that she told Dr. Eck about her back problems but that the doctor was more focused on her arm and did not address her back complaints. On cross-examination, the claimant acknowledged that Dr. Eck's notes did not record any back complaints until one and one-half months after her April 6, 2007, fall, but she reiterated that she had been telling Dr. Eck consistently that her back hurt. She also added that she, and a treating nurse, were surprised that Dr. Eck was not addressing her back problems.

¶ 6 The claimant said that she eventually visited Dr. Nate Brady to deal with her back

problems; her first visit with Dr. Brady occurred on May 18, 2007. After this initial visit, Dr. Brady formed the impression that the claimant suffered from upper and lower back pain, which he "guess[ed]" was "due to disuse and probably taking a bit of jarring force at the time of the" April 6 injury. A May 17, 2007 x-ray revealed degenerative changes throughout the lumbar spine consisting of "marginal osteophytes," disk space narrowing at the L5-S1 level, and facet joint arthropathy most marked at the L4-5 and L5-S1 levels. In a June 5 treatment note, Dr. Brady wrote that the claimant had low-back pain, but he imposed no work restrictions relating to her back. In a June 19 treatment note, Dr. Brady concluded that the claimant's back had improved with physical therapy; on July 2, he wrote that the claimant reported stiffness in her back but improvement from physical therapy.

¶ 7 On July 17, 2007, the claimant underwent an MRI of her back. The report of that MRI stated, among other things, that she had "mild degenerative changes" at the L4-5 level and a left foraminal narrowing at L5-S1 that was "minimally narrowed by degenerative disc." The report indicated an impression of "[m]ild epidural lipomatosis at the L5/S1 disc level resulting in moderate narrowing of the thecal sac" and possible irritation of the L5 nerve root due to chronic degenerative disc material.

¶ 8 On July 20, Dr. Brady wrote in a treatment note that the July 17 MRI showed nothing that would have contributed to the claimant's back pain, and he believed that nothing more than physical therapy or exercise would be required as treatment. By August 20, 2007, Dr. Brady wrote that the claimant's back pain had improved and that he believed her treatment should be limited to continued physical therapy. One week later, the claimant requested a referral to a back specialist for further treatment on her back. The claimant testified that she underwent physical therapy at Dr. Brady's behest but that the therapy sessions did not improve her back condition.

¶ 9 On October 3, 2007, the claimant underwent an epidural injection at the L4-5 level of her back to address pain at the L4-5 and L5-S1 levels, but she testified that it gave her only

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temporary relief. She said that several additional epidural lumbar injections in the ensuing year also did not improve her back condition. A report following her April 2008 injections indicated a diagnosis of low-back pain related to her L4-5 and L5-S1 disk levels; a report following her October 2008 injection contained the same diagnosis.

¶ 10 In April 2009, the claimant visited Drs. Kevin Eck and Heidi Sandersfeld, who ordered x-rays of the claimant's back and noted decreased disk height at L5-S1 and a "mild, grade 1 spondylolisthesis" at L4-5. They also noted that the claimant had begun feeling symptoms in both her back and her legs.

¶ 11 On July 9, 2009, the claimant saw Dr. Mark Lorenz. After her initial visit with Dr. Lorenz, the claimant underwent several diagnostic tests. A July 16 MRI revealed mild foraminal narrowing at the L4-5 and L5-S1 levels as well as minimal anterolisthesis at the L4-5 level. According to a report regarding a September 30, 2009, CT scan, the claimant had tears at both the L4-5 and the L5-S1 levels as well as a disc bulge at the L4-5 level. On October 8, 2009, the claimant underwent a discogram conducted by Dr. Gary Koehn, who also observed tears at the L4-5 and L5-S1 levels and concluded that the claimant was suffering from discogenic pain. After reviewing these test results, Dr. Lorenz diagnosed the claimant with L4-5 spondylolisthesis (grade 1) and L5-S1 instability with annular tears. Dr. Lorenz recommended a fusion surgery, which the claimant had not undergone as of the time of her testimony.

¶ 12 On cross-examination, the claimant agreed that she was off of work due to her wrist and arm problems from April 7, 2007, through June 28, 2007, but then worked until May 9, 2008, despite her claimed back problems. She explained that her back problems were an issue for her during that time, but she overlooked them due to her desire to return to work.

¶ 13 In his evidence deposition, Dr. Lorenz noted that the claimant had no history of back problems prior to her April 6, 2007, workplace accident, and he testified that, after reviewing diagnostic tests, he concluded that she suffered from back problems at the L4-5 and L5-S1 levels.

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He testified that the problems indicated in a 2007 MRI he reviewed and a 2009 MRI he reviewed were "pretty much the same" and "very similar." Dr. Lorenz opined that the claimant likely had some degenerative changes prior to her workplace fall but that her condition of ill-being "was in fact caused by the fall," and he said that it was "not unusual" that a patient would not notice back pain from a traumatic fall until after the patient began to move around more. He further testified that he continued to recommend back fusion surgery for the claimant. On cross-examination, Dr. Lorenz agreed that he had not seen a 2007 MRI of the claimant's back before rendering his medical opinions, but, on re-direct examination, he stated that the 2007 MRI did not change his opinions.

¶ 14 Dr. Morris Soriano, who performed an examination of the claimant on Werner's behalf on June 23, 2009, testified via evidence deposition. He stated that he would have expected any lumbar injury to become symptomatic in the three days immediately following the claimant's workplace accident, even if she was taking pain medication and was confined to bed rest for several weeks following the accident. He testified based on Waddell testing that the claimant was magnifying her symptoms when he examined her, and he further stated that, after his examination and review of the claimant's MRI results, he saw no objective medical evidence that the claimant had a back injury. On cross-examination, he agreed that his examination preceded the July 2009 MRI of the claimant's back and thus that he had not reviewed that MRI, but he said that an MRI that long after her workplace fall would have no relevance to any workplace injury.

¶ 15 Following the hearing which was held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West)), the arbitrator issued a decision on January 26, 2010, awarding the claimant 37 weeks' TTD benefits for disability relating to her wrist and elbow, but no TTD benefits for her back condition. The arbitrator noted that the claimant's first documented complaint of her back injury six weeks after her April 6, 2007, accident, and the arbitrator found that fact to be inconsistent with the claimant's testimony that her back pain was immediate or within three

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weeks of her accident. The arbitrator also noted that Dr. Brady seemed to believe that therapy could alleviate the claimant's back condition, that diagnostic testing in 2007 showed "only age-appropriate changes," and that Dr. Brady believed the claimant's back condition to have resolved by August 2007. The arbitrator further noted that the claimant returned to work in June 2007 despite her claimed back condition. In addition, the arbitrator observed that the claimant's 2007 back problems were limited, in Dr. Brady's estimation, to soft tissue stiffness, a condition that differed from the condition diagnosed by Dr. Lorenz in 2009. For these reasons, the arbitrator concluded that the claimant's current condition of ill-being is not causally related to her April 2007 workplace accident.

¶ 16 The claimant filed a petition for review of the arbitrator's decision before the Commission. In a decision with one commissioner dissenting, the Commission modified the arbitrator's decision and found that the claimant's lumbar condition is causally related to her workplace accident. The Commission discounted any discrepancies in the timing of the claimant's complaints by reasoning that "those problems were of considerably less significance to [the claimant] and her treating physicians than" her arm and wrist problems. The Commission also noted the claimant's testimony that she told her doctors about her back problems initially but that her complaints were not documented. The Commission also noted that, despite Dr. Brady's conclusions, the claimant's complaints of back pain persisted even after the conclusion of his care in August 2007 and that she pursued a course of epidural injections to address the problem. Based on these facts, as well as Dr. Lorenz's interpretation of the claimant's MRI results, and the fact that the claimant had no reported back problems prior to her workplace accident, the Commission found that her current back condition is causally related to her workplace accident. In so doing, the Commission discounted the opinion of Dr. Soriano, who, it noted, examined the claimant without the benefit of the 2009 MRI results. The Commission awarded the claimant 57 weeks' TTD benefits, as well as past and prospective medical expenses for her back condition,

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and it remanded the case to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 17 Werner filed a petition for judicial review of the Commission's decision in the Circuit Court of Will County. The circuit court confirmed the Commission's decision, and this appeal followed.

¶ 18 On appeal, Werner argues that the Commission erred in finding that the claimant's current condition of ill-being in her back was causally related to her April 6, 2007, workplace accident. We disagree.

¶ 19 A prerequisite to the right to recover benefits under the Act is some causal relationship between the claimant's employment and the injury suffered. *Schwartz v. Industrial Comm'n*, 379 Ill. 139, 144-45, 39 N.E.2d 990 (1942). Whether a causal relationship exists between a claimant's employment and his injury is a question of fact to be resolved by the Commission. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244, 461 N.E.2d 954 (1984). The Commission's decision 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, 44, 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).

¶ 20 Here, Werner argues that the manifest weight of the evidence supported the notion that the claimant's 2009 back condition was distinct from any 2007 condition she might have suffered. For this argument, Werner relies on the claimant's delay in reporting her back condition, the lack of disk pathology revealed by 2007 diagnostic tests, its interpretation of the claimant's 2009 MRI results as being much more severe than those of 2007, the fact that the claimant reported new symptoms of leg pain in 2009, the claimant's return to work in June 2007 while she was allegedly suffering from her back condition, Dr. Lorenz's admission that he had

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not reviewed a 2007 MRI of the claimant's back prior to forming his opinion, and Dr. Soriano's opinion that the 2009 condition was distinct.

¶ 21 The Commission could have cited all of this evidence to reach a conclusion that the claimant's 2009 condition of ill-being was not related to her 2007 workplace accident. However, the Commission reached the opposite conclusion based on evidence that supports the claimant's position. As the Commission noted in its opinion, the claimant testified that her back complaints were persistent following her fall, and her medical records demonstrate that she continued to seek treatment for her back long past 2007. As the Commission also noted, Dr. Lorenz opined based on his evaluation that the claimant's condition was, in fact, related to her April 2007 fall, and the record indicated that the claimant reported no back problems prior to that fall but sought extensive treatment after. We further note that the claimant's medical records consistently indicated problems at the L4-5 and L5-S1 levels. For example, diagnostic testing in 2007 indicated changes at the L4-5 and L5-S1 levels, the claimant received epidural injections at the L4-5 level in 2007 and 2008, and diagnostic testing in 2009 revealed further problems at those levels. Thus, from the time of the claimant's workplace accident forward, she complained of and received treatment for back pain at those levels. 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 did so here, and its resolution of the conflicting evidence was not against the manifest weight of that evidence.

¶ 22 Accordingly, we affirm the judgment of the circuit court, which confirmed the Commission's decision, and remand the matter back to the Commission for further proceedings.

¶ 23 Affirmed and remanded