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2016 IL App (3d) 150657WC-U

FILED: September 26, 2016

NO. 3-15-0657WC

IN THE APPELLATE COURT

OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

STEVE SUTTON,)	Appeal from
)	Circuit Court of
Appellant,)	Tazewell County
)	No. 15MR82
v.)	
THE ILLINOIS WORKERS' COMPENSATION)	
COMMISSION <i>et al.</i> (G&D Integrated,)	
Appellees).)	Honorable
)	David J. Dubicki,
)	Judge Presiding.

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

ORDER

¶ 1 *Held:* The Commission's finding that claimant was not entitled to vocational rehabilitation benefits after May 16, 2013, was not against the manifest weight of the evidence.

¶ 2 Claimant, Steve Sutton, filed an application for adjustment of claim seeking benefits from his employer, G&D Integrated, pursuant to the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2010)), for a hernia he sustained on February 15, 2011. Following an April 11, 2014, hearing, the arbitrator found that claimant's hernia injury was causally connected to the February 2011 work accident and awarded him benefits under the Act.

The parties had stipulated claimant was entitled to 28 5/7 weeks' temporary total disability (TTD) benefits which had already been paid. In addition, the arbitrator awarded claimant medical expenses and permanent partial disability (PPD) benefits to the extent of 10% of the person as a whole. Finally, the arbitrator denied claimant's request for vocational rehabilitation services or maintenance benefits after May 16, 2013. On review, the Illinois Workers' Compensation Commission (Commission) modified the arbitrator's decision by increasing the PPD award from 10% to 12.5 % of the person as a whole, but it otherwise affirmed and adopted the arbitrator's decision. On judicial review, the circuit court confirmed the Commission's decision.

¶ 3 On appeal, claimant challenges only the denial of ongoing vocational rehabilitation benefits. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The following evidence was elicited at the April 11, 2014, arbitration hearing.

¶ 6 Claimant worked for the employer as a materials handler. On February 15, 2011, he was assisting another employee pick up some heavy gears which had fallen on the floor. As he lifted the gears, he felt a pain in his groin and became dizzy and nauseated. He was taken by ambulance to Saint Francis Medical Center where he was diagnosed with a left inguinal hernia and a lower urinary tract infection. Claimant was given prescriptions for pain medication and an antibiotic, instructed to follow up with a surgeon, and released to work the following day with a five-pound-weight restriction.

¶ 7 Thereafter, claimant saw Dr. David Crawford, a general surgeon, for a surgical consultation, and Dr. Eric Elwood, a plastic surgeon, for treatment related to localized skin infections which needed to be resolved prior to his hernia repair. Dr. Elwood told claimant he

needed to stop smoking prior to undergoing elective surgery to treat his skin conditions. As of June 2011, claimant was still smoking and, for that reason, Dr. Crawford and Dr. Elwood cancelled claimant's surgeries indefinitely, noting they would not consider surgery until claimant had been nicotine free for six weeks.

¶ 8 On August 9, 2011, claimant began treating with Dr. Patrick Wyffels, a general surgeon. Dr. Wyffels initially treated claimant conservatively, focusing on claimant's skin conditions which needed to be resolved prior to surgery.

¶ 9 Claimant continued working for the employer within the five-pound-weight restriction until August 17, 2011, when his employment was terminated for tampering with a safety belt on the forklift he was operating.

¶ 10 On November 18, 2011, claimant saw Dr. Stephen Boghossian, a general surgeon, for an independent medical evaluation at the request of the employer. Dr. Boghossian agreed that claimant suffered from a hernia that was causally related to the February work accident. He further agreed that claimant's skin conditions needed to heal before he could undergo an open repair of his hernia.

¶ 11 Over the next few months, claimant's skin condition improved and on February 26, 2012, Dr. Wyffels performed an inguinal hernia repair. Following surgery, claimant continued treating with Dr. Wyffels for wound care.

¶ 12 On April 26, 2012, claimant saw Dr. Boghossian again at the request of the employer. Dr. Boghossian agreed with Dr. Wyffels' decision to proceed with the February 2012 hernia repair and he felt Dr. Wyffels "did an excellent job" in the care he provided claimant. Dr. Boghossian opined that claimant was unable to return to full-duty work at that time, but noted light-duty work with restrictions including lifting no more than 20 pounds would be appropriate.

¶ 13 On August 3, 2012, Dr. Wyffels released claimant to return to work with "chronic lifting restrictions of 30 [pounds]." After reviewing claimant's job description, Dr. Wyffels felt claimant could return to his prior job.

¶ 14 On January 29, 2013, claimant saw Dr. Boghossian for the last time. Dr. Boghossian opined that claimant had reached maximum medical improvement. He agreed with the permanent restrictions outlined by Dr. Wyffels, noting claimant should not do any job that requires lifting more than 30 pounds, or excessive bending, pulling, or stretching. However, unlike Dr. Wyffels, Dr. Boghossian felt claimant would be unable to return to his prior job due to claimant's higher risk of hernia recurrence.

¶ 15 In March 2013, claimant began a vocational rehabilitation program. He first met with Daniel Minnich, a certified rehabilitation consultant, for an initial evaluation on March 8, 2013. The purpose of the initial evaluation was to obtain an understanding of claimant's medical condition, work history, social factors, interests, and hobbies so that Minnich could formulate a vocational rehabilitation plan for claimant. Following the evaluation, Minnich prepared a rehabilitation plan for claimant that included having claimant obtain his General Equivalency Diploma (GED) and looking for work within claimant's restrictions. Based on the initial evaluation, Minnich believed claimant could find work within his work restrictions.

¶ 16 Minnich next met with claimant on March 19, 2013. During this meeting, they discussed the job market, cold calling potential employers, claimant's resume, developing job leads, and claimant's disability. Following this meeting, Minnich drafted a letter to claimant summarizing the issues they discussed at the meeting. Minnich also informed claimant that the next meeting was scheduled for 11 a.m. on April 1, 2013, at the Marquette Heights public library and would be with Minnich's colleague, Jim Naumczik.

¶ 17 According to Minnich's progress report, claimant failed to attend the April 1, 2013, meeting. Although Naumczik attempted to call claimant to confirm the appointment at 10:50 a.m. and again at 11:10 a.m., he was unable to reach him. At 11:25 a.m., claimant called Naumczik from the library's parking lot and informed him he did not feel comfortable having the meeting at the library and requested future meetings be held at his attorney's office. This appointment was later rescheduled to April 10, 2013, at which time claimant met with Naumczik at claimant's attorney's office.

¶ 18 Minnich next met with claimant at the Marquette Heights public library on April 17, 2013. During this meeting, they discussed the essentials of successful job placement, including interview techniques, clothing and first impressions, job leads, disability, cold calling, resumes, and sample job applications. Minnich also advised claimant he should shave his beard and purchase new clothing to be presentable to prospective employers. According to Minnich, claimant objected to the idea of shaving but agreed to meet Minnich at Kohl's one hour later to purchase new clothing to wear to job interviews. Minnich testified, however, that claimant did not meet him at Kohl's.

¶ 19 On April 25, 2013, Minnich drafted a letter to claimant, summarizing their last meeting and informing him their next meeting was scheduled for 2 p.m. on April 29, 2013. According to Minnich, he later called claimant and rescheduled the meeting to 2 p.m. on May 3, 2013. Minnich testified that claimant failed to show up for the May 3, 2013, meeting.

¶ 20 Minnich and claimant next met on May 9, 2013, at which time Minnich showed claimant a vocational profile he had prepared which contained 40 jobs at the light level for which claimant would qualify. However, according to Minnich's progress report from that date, claimant informed him that Dr. Wyffels recently added new medical restrictions which prevented

claimant from working in any capacity. Claimant also told Minnich he was applying for social security disability benefits for other health reasons, including arthritis and a skin disease. Based on claimant's statements regarding his inability to work, Minnich opined, "[a]t this point, the job placement plan is essentially going nowhere because [claimant] is convinced that he is disabled and will not be able to even work as a parking lot attendant." The progress report also indicated that Dr. Wyffels' office had called him the week before to let him know claimant was in a great deal of pain which would prevent him from working. This was the last date Minnich had any contact with claimant.

¶ 21 In a May 16, 2013, progress report, Minnich summarized his prior meetings with claimant and noted that direct job placement would have commenced after vocational protocols were completed, and that job leads within claimant's restrictions had been developed. Minnich further concluded, "[d]espite best efforts to counsel [claimant] on his abilities and job prospects, [claimant] was adamant about his new physical restrictions that Dr. Wyffels reportedly provided him," and claimant "did not appear willing to comply with the necessary steps in obtaining and securing a new position (*i.e.*, shave for meetings with potential employers, etc.)."

¶ 22 At his deposition, Minnich testified that, in addition to missing some scheduled appointments, claimant did not follow Minnich's recommendations regarding his personal appearance and did not try to reschedule the appointment to purchase clothing. Minnich agreed that at the time of his last meeting with claimant, they were still in the instruction phase of rehabilitation and had not actively started searching for jobs. Minnich felt claimant could be employable in the near future if he renewed vocational rehabilitation and cooperated with Minnich.

¶ 23 At arbitration, claimant testified he had not missed any vocational rehabilitation

appointments, but he stated there was one occasion where the library they were supposed to meet at was closed. Claimant agreed Minnich had asked him to shave his beard and he told Minnich he did not want to shave. According to claimant, however, Minnich then told him to just "keep it trimmed and nice." Claimant further testified he did go to Kohl's at the agreed upon time on April 17, 2013, but he did not see Minnich there. Claimant stated he was willing to participate in training and obtain his GED and that he "wouldn't be opposed" to restarting vocational rehabilitation.

¶ 24 Claimant further testified that he began a self-directed job search in November 2013 and explained the six-month delay was due to a lack of finances and "a long healing process." According to claimant, his job search was limited to having friends take him places where he would introduce himself and "present himself for employment." Although most of the employer's told him to fill out an on-line application, he did not do so, despite having access to computers at the Marquette Heights public library. Finally, claimant denied ever having told Minnich he was unable to work in any capacity or that Dr. Wyffels told him he was incapable of working.

¶ 25 On June 2, 2014, the arbitrator issued his decision and awarded claimant benefits under the Act as stated. However, the arbitrator denied claimant's request for vocational rehabilitation services or maintenance benefits after May 16, 2013. In particular, the arbitrator questioned claimant's "willingness to fully comply with a vocational rehabilitation plan or engage in a bon[a] fide job search, whether self directed or assisted." While the arbitrator noted the discrepancies between Minnich's and claimant's testimony as to whether claimant told Minnich he was unable to work, as well as the lack of documentation in Dr. Wyffels' records indicating claimant was unable to work, he found Minnich's testimony could not be ignored.

Further, the arbitrator pointed to claimant's "physical condition as reported in the medical records, the six-month gap in time before he resumed his self-directed job search, the limited nature and duration of that self-directed job search, and the fact that [claimant] ha[d] applied for [s]ocial [s]ecurity [d]isability benefits," as further evidence of a "cause for suspicion with regard to [claimant's] ability and motivation to participate in a rehabilitation program or vocational assistance." Finally, the arbitrator concluded that "[a]side from the [a]rbitrator's questions as to [claimant's] earnestness, *** the [claimant] failed to provide sufficient evidence from which to conclude that vocational rehabilitation would be appropriate."

¶ 26 On March 27, 2015, the Commission modified the arbitrator's decision by increasing the PPD award from 10% to 12.5% of the person as a whole, but it otherwise affirmed and adopted the arbitrator's decision. With respect to vocational rehabilitation, the Commission "agree[d] that [claimant] did not sustain his burden of proof with regard to entitlement to additional vocational rehabilitation." On August 24, 2015, the circuit court confirmed the Commission's decision.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 On appeal, claimant challenges only the denial of ongoing vocational rehabilitation benefits.

¶ 30 "A claimant is generally entitled to vocational rehabilitation when he sustains a work-related injury which causes a reduction in his earning power and there is evidence that rehabilitation will increase his earning capacity." *Greaney v. Industrial Comm'n*, 358 Ill.App.3d 1002, 1019, 832 N.E.2d 331, 347 (2005) (citing *National Tea Co. v. Industrial Comm'n*, 97 Ill.2d 424, 432, 454 N.E.2d 672, 676 (1983)). "Vocational rehabilitation may include, but is not

limited to, counseling for job searches, supervising a job search program, and vocational retraining including education at an accredited learning institution." 820 ILCS 305/8(a) (West 2008). Factors favoring vocational rehabilitation include: "(1) that the employee's injury caused a reduction in earning power and there is evidence rehabilitation will increase his earning capacity, (2) that the employee is likely to lose job security due to his injury, and (3) that the employee is likely to obtain employment upon completion of rehabilitation training." *Amoco Oil Co. v. Industrial Comm'n*, 218 Ill.App.3d 737, 751, 578 N.E.2d 1043, 1052 (1991). "Additional factors to be considered are the costs and benefits to be derived from the program; the employee's work-life expectancy; his ability and motivation to undertake the program; and his prospects for recovering work capacity through medical rehabilitation or other means." *Id.* at 751, 578 N.E.2d at 1053. "In attempting rehabilitation of the injured employee[,] there are 'boundaries which reasonably confine the employer's responsibility,' including a requirement that the claimant make good faith efforts to cooperate in the rehabilitation effort." *Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 115-16, 561 N.E.2d 623, 626 (1990) (quoting *National Tea*, 97 Ill. 2d at 433, 454 N.E.2d at 676).

¶ 31 "The determination of whether a claimant is entitled to an award of vocational-rehabilitation benefits is a question to be decided by the Commission, and its finding will not be reversed unless it is against the manifest weight of the evidence." *W.B. Olson, Inc. v. Illinois Workers' Compensation Comm'n*, 2012 IL App (1st) 113129WC, ¶ 31, 981 N.E.2d 25. "In resolving such a question, it is the function of the Commission to judge the credibility of the witnesses, resolve any conflicts in the testimony, and draw reasonable inferences from the evidence presented." *Id.* On review, the appropriate test is whether there is sufficient evidence in the record to support the Commission's decision, not whether this court would reach the same

conclusion. *Freeman United Coal Mining Co. v. Workers' Compensation Comm'n*, 386 Ill. App. 3d 779, 784, 901 N.E.2d 906, 912 (2008). A finding is against the manifest weight of the evidence where the opposite conclusion is clearly apparent. *W.B. Olson*, 2012 IL App (1st) 113129WC, ¶ 31, 981 N.E.2d 25.

¶ 32 As noted, the Commission found claimant was not entitled to vocational rehabilitation services after May 16, 2013. After reviewing the record, we find it contains sufficient evidence to support the Commission's decision such that it was not against the manifest weight of the evidence.

¶ 33 Here, conflicting evidence was presented regarding claimant's motivation to participate in vocational rehabilitation services. In particular, claimant testified he never missed a vocational rehabilitation appointment. However, according to Minnich, claimant failed to show up for three of their eight scheduled appointments. Additionally, while claimant stated he never told Minnich he was unable to work, Minnich's testimony and progress reports indicate otherwise. Notably, Minnich reported that on May 9, 2013, claimant informed him (1) he was applying for social security disability benefits for other medical issues and (2) Dr. Wyffels had recently added new medical restrictions which prevented him from working in any capacity. The latter statement is further supported by Minnich's note that Dr. Wyffels' office called him the week before and informed him claimant's pain would prevent him from working. Finally, while claimant testified Minnich simply told him to keep his beard trimmed, Minnich's reports and testimony indicate claimant's refusal to shave showed an unwillingness to comply with the necessary steps to obtain a new job.

¶ 34 The Commission found Minnich's testimony credible, while finding claimant's testimony suspect. Specifically, the Commission noted that Minnich "had no apparent interest in

the outcome of the matter and, in fact, as [he] was being paid for his services, discontinuance of his services would appear to be contrary to his interests." On the other hand, the Commission pointed to claimant's six-month delay in resuming a self-directed job search, the limited nature of that job search, and claimant's testimony that he lacked access to a computer as "cause for suspicion" with regard to claimant's willingness to comply with vocational rehabilitation services and his overall motivation to obtain a job. Essentially, the Commission found that claimant's actions failed to show he made a good faith effort to cooperate with the vocational rehabilitation services he had already been offered and further indicated a lack of motivation to commit to additional vocational rehabilitation services.

¶ 35 As noted, it was the Commission's function to judge the credibility of witnesses and resolve conflicts in the evidence. Based on the evidence, we conclude the Commission's finding that claimant was not entitled to vocational rehabilitation benefits after May 16, 2013, was not against the manifest weight of the evidence.

¶ 36 III. CONCLUSION

¶ 37 For the reasons stated, we affirm the circuit court's order confirming the Commission's decision.

¶ 38 Affirmed.