2015 IL App (4th) 140338WC-U

Workers' Compensation
Commission Division
Order Filed: April 17, 2015

No. 4-14-0338WC

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

DOUGLAS L. GAGNON,	)	Appeal from the Circuit Court
	)	of Macon County.
Appellant,	)	
v.	)	No. 13-MR-338
ILLINOIS WORKERS' COMPENSATION COMMISSION, *et al.*,	)	Honorable A.G. Webber,
(Omni Erection, Inc., Appellee).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The judgment of the circuit court was affirmed where the Commission's finding, that the claimant failed to prove that his current condition of ill-being or his need for prospective medical services are causally related to his workplace injury, was not against the manifest weight of the evidence.

¶ 2 The claimant, Douglas L. Gagnon, appeals from the circuit court order which confirmed the decision of the Illinois Workers' Compensation Commission (Commission) finding that his current condition of ill-being and his need for prospective medical services are not causally

related to the injury he sustained while in the employment of Omni Erection, Inc. (Omni). For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 The following factual recitation is taken from the evidence adduced at the arbitration hearing.

¶ 4 Prior to the events giving rise to the instant claim, the claimant had a medical history which is relevant to the disposition of this case. On April 19, 2004, while employed as an iron worker, the plaintiff fell from an "I" beam, injuring his left shoulder and back. As a result, the claimant received medical treatment from the date of his accident through 2010. During that period, the claimant was seen at the Orthopedic Center of Illinois and St. Mary's Family Medicine, and he was examined and treated by Drs. Paul Smucker, Timothy Van Fleet, and Muneses. The claimant complained of low back pain, radiating into his left thigh. His treating physicians prescribed pain medication, physical therapy, and lumbar epidural injections.

¶ 5 A treatment note of Dr. Smucker dated June 2, 2004, states that the doctor reviewed a report of an MRI scan of the claimant's spine which revealed degenerative changes with some bulging, but without neural impingement. Dr. Smucker concluded that the MRI findings were suggestive of a degenerative disc problem with exacerbation.

¶ 6 The claimant underwent a discogram on August 2, 2004, which was positive at L5-S1, L3-L4, and L4-L5. Dr. Smucker continued to prescribe pain medication and ordered a surgical consultation with Dr. Van Fleet. Drs. Smucker and Van Fleet, along with Dr. Mike Mayer, who also evaluated the claimant, did not think that the claimant was a surgical candidate at that time.

¶ 7 On the recommendation of Dr. Smucker, the claimant underwent a functional capacity evaluation (FCE) on November 23, 2004. The report of that evaluation concludes that the claimant was capable of medium demand work at and below his waist and light demand work

above the shoulder. Work as an iron worker is categorized as heavy physical demand labor. On December 10, 2004, Dr. Smucker continued to prescribe pain medication for the claimant and recommended permanent work restrictions of 25-pound maximum lifting and no repetitive bending at the waist.

¶ 8 The claimant underwent a second FCE on November 10, 2005, the report of which states that he was capable of working at a medium demand level, lifting 30 to 50 pounds. The following day, Dr. Smucker released the claimant to work at a medium demand level, lifting 50 pounds occasionally.

¶ 9 In February 2006, the claimant began working as a truck driver, but in October of 2007, he resumed working as an iron worker.

¶ 10 On January 4, 2010, the claimant was examined by Dr. Muneses. The claimant complained of low back pain and intermittent radiating leg pain. The history contained within the record of that visit states that the claimant told Dr. Muneses that he had been taking Vicodin which he received from his co-workers about once a week to take the edge off of his pain. According to the notes of that visit, Dr. Muneses found that his examination of the claimant was consistent with lumbar disc disease. Dr. Muneses recommended an MRI and referred the claimant to a pain clinic. No MRI was performed, however, as authorization was denied by the insurance carrier.

¶ 11 On May 27, 2011, the claimant began working for Omni as an iron worker. According to the claimant, he was not experiencing severe back pain when he started working for Omni, and that between May 27, 2011, and June 13, 2011, he did not experience acute or severe back pain while working. However, Robert Vogel, the claimant's job-site foreman, testified that, on his

first day working for Omni, the claimant asked him for some Vicodin because his back was bothering him.

¶ 12 On June 13, 2011, at around 1:30 p.m., the claimant and a co-worker, Jason Woodrum, were installing sheet metal panels on a roof. The individual panels were approximately 2 feet wide and 40 to 45 feet long, weighing between 100 and 120 pounds each. According to the claimant, as he and Woodrum were lifting one of the sheet metal panels, he lost his footing, causing his body and back to twist. Although the claimant did not fall, he testified that he felt a sharp pain in his low back and down his right leg. Woodrum testified that he saw the claimant slip as they were lifting one of the sheet metal panels that day and that the claimant later told him that he had hurt his back. The claimant testified that he worked the remainder of that day, thinking that he had pulled something.

¶ 13 The claimant did not work on June 14, 2011, due to inclement weather. He testified that Vogel called him in the morning of June 15, 2011, informing him that they would not work that day either, again due to weather conditions. According to the claimant, it was during that phone call that he informed Vogel that his back was sore. Vogel had no recollection of the claimant telling him during that call that he had injured his back two days earlier.

¶ 14 On June 15, 2011, the claimant went to the emergency room at Decatur Memorial Hospital, complaining of low back pain which had begun two days earlier. The claimant gave a history of an accident at work which was consistent with his testimony at arbitration. He also acknowledged similar problems with his back in the past. Based upon an x-ray taken that day, the examining physician diagnosed the claimant as suffering from an acute compression fracture at L5. The claimant was advised not to return to work and seek follow-up care the next day.

¶ 15 On June 16, 2011, the claimant went to work and delivered the off-work slip that he had received at Decatur Memorial Hospital to Mark Reynolds, the owner of Omni, and informed him that he had injured his back on June 13.

¶ 16 On June 20, 2011, the claimant was examined by Dr. Thomas Fulbright, a neurosurgeon, to whom he was referred by the emergency room personnel at Decatur Memorial Hospital. The notes of that visit reflect that the claimant gave a history of having injured himself while working on June 13, which was consistent with his testimony at arbitration. The claimant complained of pain in his low back, radiating into the sacroiliac area along with bilateral buttock pain. Dr. Fulbright noted no significant prior medical history. When deposed, Dr. Fulbright testified that the claimant never told him of his 2004 injury. Dr. Fulbright reviewed the x-rays taken of the claimant on June 15 and concluded that the fracture noted at L5 might have been an old fracture. Dr. Fulbright prescribed physical therapy and recommended that the claimant have an MRI scan.

¶ 17 On June 21, 2011, the claimant began physical therapy at Decatur Memorial Hospital as prescribed by Dr. Fulbright. He gave the therapist a history of having injured his back in 2004 and again on June 13, 2011, when he slipped while lifting a sheet metal roof panel. The claimant described his pain as being primarily on his left side, and denied any numbness or tingling.

¶ 18 On July 5, 2011, the claimant underwent the MRI recommended by Dr. Fulbright. The scan revealed mild spinal stenosis at L3-L4, degenerative changes throughout the claimant's lumbar spine, and scoliosis. Dr. Fulbright testified that the degenerative changes which he saw on the MRI were long-term in nature, growing by accretion. He saw no evidence of a fracture at L5 as originally reported. He saw nothing of an acute nature, but the degenerative changes at L3-L4 were profound and would account for the claimant's pain complaints.

¶ 19 When the claimant next saw Dr. Fulbright on July 25, 2011, he reported that physical therapy had been somewhat beneficial. However, Dr. Fulbright continued to authorize the claimant to remain off of work, and he prescribed a lumbosacral injection.

¶ 20 The claimant had a facet joint injection on August 1, 2011. When he next saw Dr. Fulbright on August 15, 2011, the claimant reported that the injection was minimally beneficial. Dr. Fulbright ordered an epidural steroid injection at L3-L4 and continued to prescribe physical therapy.

¶ 21 Dr. Fulbright's records reflect that the claimant called his office on August 16, 2011, reporting that the dose of Norco that he was taking was not working and requesting a stronger dose. The request was granted and a new prescription was issued.

¶ 22 On August 31, 2011, the claimant received a translaminar injection at L3-L4.

¶ 23 On September 13, 2011, when he was examined by Dr. Fulbright, the claimant complained of back and leg pain. Dr. Fulbright discussed the possibility of surgery, and ordered a second translaminar injection which was administered on September 30, 2011.

¶ 24 On October 12, 2011, the claimant was examined at Omni's request by Dr. Morris Soriano, a neurosurgeon. The claimant gave a history of accident on June 13, 2011, again consistent with his testimony at arbitration. He complained of low back pain, occasional pain in his right posterior thigh, and calf pain during physical therapy. Following his examination of the claimant and a review of his medical records, Dr. Soriano opined that, as a result of his work-related accident, the claimant suffered a mild to moderate lumbar strain with unverifiable soft tissue injuries. He concluded that the claimant did not require surgery, or any further medical treatment, for the strain. Dr. Soriano also opined that, unrelated to his work accident of June 13, 2011, the claimant suffered from multilevel degenerative facet disease at L3-L4 with some end

plate changes and spurring. According to Dr. Soriano: "It is neither physically probable nor even barely possible that a slight slip or a slight mis-step where his foot went one foot or so on one or two occasions would have permanently aggravated his facet disease or degenerative disc disease." When deposed, Dr. Soriano admitted that he never saw the films of the claimant's July 5, 2011, MRI, but acknowledged that he had no evidence disputing Dr. Fulbright's conclusion that the MRI showed significant and profound degenerative changes at L3-L4 and end plate changes.

¶ 25 When the claimant saw Dr. Fulbright on October 21, 2011, the doctor was of the opinion that the claimant was a candidate for a direct lateral interbody fusion. However, on October 25, 2011, the claimant called Dr. Fulbright's office, stating that Omni's insurance carrier had denied his claim.

¶ 26 In an amendment to his examination report dated October 25, 1011, Dr. Soriano wrote that his physical examination of the claimant on October 12, 2011, was objectively unremarkable and that the claimant had reached maximum medical improvement (MMI) as of that date. Dr. Soriano also opined that the claimant was capable of returning to full-duty work, without restrictions.

¶ 27 The claimant returned to see Dr. Fulbright on November 7, 2011, complaining of pain. Dr. Fulbright told the claimant to remain off of work and to return for a follow-up appointment in 8 weeks.

¶ 28 On December 19, 2011, Dr. Fulbright completed an Attending Physician's Statement in which he wrote that the claimant's condition is related to his work injury of June 13, 2011, that the claimant had never experienced the same or similar condition, and that, because of his injury, the claimant had been unable to work since June 20, 2011. Dr. Fulbright noted that the

claimant's subjective complaints were of back and bilateral leg pain, and that he was of the opinion that the claimant was in need of surgery. When deposed, Dr. Fulbright testified that he recommended surgery due to the claimant's substantial degenerative changes at L3-L4 which suggest an instability causing the claimant's pain.

¶ 29 When the claimant returned to see Dr. Fulbright on January 12, 2012, he complained of back pain and stated that he was anxious to have surgery. Dr. Fulbright continued to authorize the claimant to remain off of work.

¶ 30 When deposed, Dr. Fulbright opined that the back pain and complaints for which he had been treating the claimant, and his need for surgery, were causally related to the claimant's work injury of June 13, 2011. He explained that, although the claimant had a long-standing degenerative condition, he had been coping with the condition until he experienced a precipitating event, the accident of June 13, 2011, which led to the acute onset of pain. On cross-examination, however, Dr. Fulbright acknowledged that, if the history which the claimant provided him was incomplete, his causation opinion could be wrong. He testified that he was unaware of the claimant's 2004 back injury. Dr. Fulbright testified that, if the claimant injured his lumbar spine in 2004 and developed radiculopathy, was off of work for nearly two years as a result, had a positive discogram at L3-L4 and continued to have back pain on and off, the condition for which he had been treating the claimant could be related to the 2004 incident.

¶ 31 At arbitration, the claimant testified that he did not have severe back pain prior to June 13, 2011, and denied taking any prescription pain medication in the preceding two years. He stated that the injuries which he sustained in 2004 had completely healed and did not bother him, and that he was unaware that Dr. Smucker had imposed any permanent work restrictions upon him. Additionally, the claimant could not recall being treated by Dr. Muneses in 2010.

¶ 32 Following a hearing held pursuant to section 19(b) of the Workers' Compensation Act (Act) (820 ILCS 305/19(b) (West 2010)), the arbitrator found that the claimant suffered injuries as the result of an accident that arose out of and in the course of his employment with Omni on June 13, 2011. The arbitrator awarded the claimant temporary total disability (TTD) benefits through October 12, 2011, and ordered Omni to pay all reasonable and necessary medical expenses incurred by the claimant through October 12, 2011, subject to the Medical Fee Schedule. However, the arbitrator found that the claimant failed to prove that the current condition of ill-being in his low back or his need for prospective medical care are causally related to his work injury of June 13, 2011. Specifically, the arbitrator found that the claimant's testimony regarding his 2004 accident and lack of severe back pain prior to June 13, 2011, lacked credibility. She found Dr. Soriano's opinions more credible than those of Dr. Fulbright, noting that, unlike Dr. Fulbright, Dr. Soriano was aware of the claimant's prior back history. Additionally, the arbitrator found Dr. Fulbright's causation opinion unpersuasive based upon the concessions that he made during his deposition. As a consequence, the arbitrator denied the claimant's requests for TTD benefits after October 12, 2011, and the prospective medical care in the form of surgery recommended by Dr. Fulbright.

¶ 33 The claimant filed for a review of the arbitrator's decision before the Commission. In a unanimous decision, the Commission affirmed and adopted the arbitrator's decision and remanded the matter pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

¶ 34 The claimant sought a judicial review of the Commission's decision in the Circuit Court of Macon County. The circuit court confirmed the Commission's decision, and this appeal followed.

¶ 35 The claimant argues that the Commission's finding, that he failed to prove that the current condition of ill-being in his low back or his need for prospective medical care are causally related to his work injury of June 13, 2011, is against the manifest weight of the evidence. In support of his argument in this regard, the claimant relies chiefly upon Dr. Fulbright's causation opinion and a chain-of-events theory (see *Navistar International Transportation Corp. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1205 (2000)).

¶ 36 The claimant in a workers' compensation case has the burden of proving, by a preponderance of the evidence, all of the elements of his claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). Whether a causal relationship exists between a claimant's employment and his condition of ill-being is a question of fact to be resolved by the Commission, and its determination of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984). In resolving such issues, it is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *O'Dette*, 79 Ill. 2d at 253. For a finding of fact to be against the manifest weight of the evidence, a conclusion opposite to the one reached by the Commission must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992). Whether a reviewing court might have reached the same conclusion is not the test of whether the Commission's determination on a question of fact is supported by the manifest weight of the evidence. Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982)

¶ 37 In this case, the arbitrator found that the claimant's testimony on the issue of his health immediately prior to his accident on June 13, 2011, lacked credibility. She pointed out that the

claimant's medical records contradicted his testimony that the injuries which he suffered in 2004 had healed. In addition, although the claimant denied experiencing severe back pain prior to June 13, 2011, Vogel testified that the claimant asked him for Vicodin on May 27, 2011, because his back was hurting. The Commission adopted the arbitrator's determination that the claimant lacked credibility concerning the condition of his back prior to June 13, 2011, and, based on the content of the record, we are unable to find that an opposite conclusion is clearly apparent.

¶ 38 In addition, the Commission adopted the arbitrator's finding that Dr. Soriano's causation opinion was more credible than Dr. Fulbright's. The arbitrator noted that Dr. Fulbright was unaware of the claimant's 2004 injury, the fact that he had been off of work for two years as a result, or that the claimant had a positive discogram at L3-L4 in August of 2004 and readily admitted that, if those facts were true, the condition for which he had been treating the claimant could be related to his 2004 injury. In contrast, Dr. Soriano was unequivocal in his opinion that the current condition of ill-being in the claimant's back is not related to the events of June 13, 2011. He noted that the claimant suffered from multilevel disc disease prior to June 13, 2011, a fact that is well supported by the claimant's medical records. Dr. Soriano opined that, as a result of his June 13, 2011, accident, the claimant suffered a moderate lumbar strain and unverifiable soft tissue injuries and that he had reached MMI by October 12, 2011, and required no further medical treatment for those conditions. He went so far as to state: "It is neither physically probable nor even barely possible that a slight slip or a slight mis-step where his foot went one foot or so on one or two occasions would have permanently aggravated his facet disease or degenerative disc disease." Although Dr. Soriano admitted that he had not personally reviewed the film of the claimant's July 5, 2011, MRI, he accepted Dr. Fulbright's opinion that the film

showed degenerative changes at L3-L4 at the end plate. However, even Dr. Fulbright conceded that the claimant suffered from a long-standing degenerative spinal condition.

¶ 39 Based upon the evidence of record, we are unable to say that the Commission erred in relying upon the opinion of Dr. Soriano. All of the claimant's arguments address the weight to be given to those opinions, a matter to be resolved by the Commission. As an opposite conclusion is not clearly apparent, we are unable to conclude that the Commission's holding that the claimant failed to prove that the current condition of ill-being in his low back or his need for prospective medical care are causally related to his work injury of June 13, 2011, is against the manifest eight of the evidence. We, therefore, affirm the judgment of the circuit court which confirmed the Commission's decision and remand this matter back to the Commission for further proceedings.

¶ 40 Affirmed and remanded to the Commission.