

NOTICE

Decision filed 12/19/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2011 Il App (1st) 103144WC-U

Workers' Compensation
Commission Division
Filed: December 19, 2011

No. 1-10-3144WC

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).

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

ROMAR TRANSPORTATION,) APPEAL FROM THE
) CIRCUIT COURT OF
Appellant,) COOK COUNTY
)
v.) No. 10 L 50051
)
ILLINOIS WORKERS' COMPENSATION)
COMMISSION, et al.,)
(MARK KORUBA,) HONORABLE
) SANJAY T. TAILOR,
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

- ¶ 1 Held: The Commission's finding as to causation is neither erroneous as a matter of law nor against the manifest weight of the evidence.
- ¶ 2 Romar Transportation (Romar) appeals from an order of the Circuit Court of Cook County confirming a decision of the Illinois Workers' Compensation Commission (Commission) that

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awarded the claimant, Mark Koruba, benefits pursuant to the Workers' Compensation Act (820 ILCS 305/1 et seq. (West 1996)), for an injury he allegedly sustained as a result of a workplace accident during his employment for Romar. For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 The following factual recitation is taken from the evidence presented at the arbitration hearing on December 8, 2008.

¶ 4 The claimant worked for several years as a dispatcher for Romar. He testified that he began having troubles with his vision in early grade school and that, in his teenage years, he was diagnosed with cone rod dystrophy, a condition that later evidence indicated is a hereditary disorder that inevitably leads to blindness or significant loss of vision. The claimant said that his eyesight was "approximately the same" from his teenage years to the time of the April 21, 1997, workplace accident in which the bridge of his nose collided with a door jamb. The claimant said that he had been able to read and drive (and pass necessary driving tests) without trouble prior to the accident but that, after the accident, he had difficulty reading and could not drive safely.

¶ 5 The claimant received treatment for his nose and, in July 1997, began receiving treatment for his eyes. The claimant said that he sought the eye treatment because he noticed that he was unable to read "normal print" and was unable to focus sufficiently to drive. The claimant recalled that the degeneration of his eyesight occurred in "[t]he month immediately following the accident," and he said that his eyesight at the time of his testimony was "[e]xactly the same as it's been since directly after the injury." When the claimant sought treatment for his eyes, he was told that his condition was untreatable and that he was legally blind.

¶ 6 Medical records of the claimant's July 1997 eye treatment visit include a questionnaire in which he indicated that he had problems with his vision "since childhood" but that the problems "ha[d] worsened in [the] past three months." A note of the July treatment visit states that the claimant reported that his vision had gradually worsened since childhood but had markedly

decreased in the prior three months. The claimant also presented into evidence his driving records, which indicated that he held a valid driver's license at the time of his April 1997 accident.

¶ 7 Medical records presented into evidence indicate that the claimant's eyesight tested as 20/80 in the right eye and 20/100 in the left in 1990, 20/100 in the right eye and 20/400 in the left after the accident in July 1997, and 20/200 in the right eye and 20/240 in the left in August 1997.

¶ 8 Over Romar's otherwise unexplained and unelaborated-on objection "as to the scientific basis," the petitioner presented deposition testimony of Dr. John Fournier, an ophthalmologist. (In response to the "scientific basis" objection, the arbitrator stated that he would rule on any objections raised in the deposition testimony; there were no "scientific basis" objections raised during that testimony.) Dr. Fournier explained that the claimant's condition, cone rod dystrophy, can leave a person's vision stable for many years but will eventually cause significant visual impairment. Based on his review of the claimant's medical records, Dr. Fournier opined that the trauma to the claimant's head could have affected his eye without leaving evidence of trauma, because any signs of trauma could have disappeared in the three months between the accident and the time the claimant received treatment for his eyes. Dr. Fournier stated that the medical records could not resolve whether the trauma to the claimant's head also caused physical problems in his eye, and Dr. Fournier noted the "traumatic decrease in vision" and "sudden deterioration" following the accident after years of "relatively stable" vision. Dr. Fourier continued:

"Now many times in medicine we cannot explain everything ***. I'll tell you my theory with medical and surgical certainty what happened here. *** [The claimant] was predestine[d] to go blind. *** This would have happened without the [nose] injury. *** This is what I believe happened and it may have been very difficult *** to identify. The [effect] of the trauma to both eyes that could have been transmitted through the bone in addition to the hereditary problem that he may have had and this trauma *** maybe having retinal edema, maybe having macular edema that could have cleared, maybe having some

other stigmatic trauma that could have resolved over three months ***, we have this dramatic loss of vision and the rapid deterioration *** has been unexplained and an attempt has been made to delink it from [the claimant's accident]."

¶ 9 When asked if he had an opinion, to a reasonable degree of medical certainty, regarding the causal connection between the claimant's workplace accident and his condition of ill-being, Dr. Fournier opined that "the trauma [that] [the claimant] experienced superimposed and independent of this retinal disorder caused it to progress for whatever reasons." Dr. Fournier emphasized that medicine "is not an exact science" but that the circumstantial evidence—specifically "[t]hree months going from a condition that had been stable many years *** [to] all of a sudden blindness," the fact that both eyes deteriorated simultaneously when the deterioration prior to the accident had been asymmetrical, and the lack of another satisfactory explanation for the claimant's deterioration—led him to conclude that there was a causal connection between the workplace accident and the claimant's condition of ill-being. On cross-examination, Dr. Fournier acknowledged that there were no records of tests of the claimant's eyesight between 1990 and the date of the April 1997 workplace accident. However, Dr. Fournier stated that he nonetheless had ample basis for concluding that the claimant's vision was stable prior to the accident, because he knew that the claimant was able to drive (and keep a driver's license) and perform work functions prior to the accident.

¶ 10 Dr. Carrie Golden-Brenner, who examined the claimant's records at Romar's request, testified that people suffering from cone dystrophy usually become legally blind by middle age. She explained that the condition is progressive but that the rate of progression can vary. Dr. Golden-Brenner opined that there was no causal relationship between the claimant's workplace accident and his loss of vision. She based this opinion on the fact that there had been no literature connecting cone dystrophy to trauma, as well as her assessment that the changes between the claimant's 1990 and 1997 vision tests showed "natural progression" of his cone dystrophy. She

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also explained that cone dystrophy would not be affected by trauma or kinetic energy because its development is a metabolic process.

¶ 11 On March 20, 2009, the arbitrator awarded the claimant temporary total disability (TTD) benefits of \$600 per week for 16 2/7 weeks for damage to his eyes and permanent total disability (PTD) benefits of \$600 per week for the 100% loss of each of his eyes. In so doing, the arbitrator found that the claimant's eye condition was causally related to his workplace nose injury. The arbitrator reached this conclusion by relying on Dr. Fournier's opinion as well as the facts that the claimant was able to perform various job duties without difficulty prior to the accident but quickly became unable to do so after the accident. The arbitrator also noted a "dramatic" deterioration of the claimant's visual acuity after the accident.

¶ 12 Romar sought review of the arbitrator's decision before the Commission, which, with one commissioner dissenting, affirmed and adopted the arbitrator's findings but emphasized the fact that some evidence showed that the claimant was able to drive within two months of his workplace accident, the fact that the claimant reported sudden declines in his vision to caregivers after the accident, and Dr. Fournier's point that the claimant's vision quickly deteriorated in both eyes even though prior vision loss had been asymmetrical.

¶ 13 Romar sought judicial review of the Commission's decision in the Circuit Court of Cook County. The circuit court confirmed the Commission's decision, and this appeal followed.

¶ 14 Romar's first argument on appeal is that the Commission erred as a matter of law in considering Dr. Fournier's expert causation testimony. Romar contends that, absent Fournier's testimony, the claimant failed to prove all of the elements of his claim for benefits. According to Romar, Dr. Fournier's causation opinion should have been disregarded because it was premised purely on speculation and had no basis in evidentiary fact. Romar points out that liability under the Act "cannot be premised upon imagination, speculation or conjecture but must arise from the facts," (*Illinois Bell Telephone Co. v. Industrial Comm'n*, 265 Ill. App. 3d 681, 685, 638 N.E.2d

307 (1994)) and that "[a]n expert witness'[s] opinion cannot be based on mere conjecture and guess" (*Dyback v. Weber*, 114 Ill. 2d 232, 244, 500 N.E.2d 8 (1986)). Based on these principles, Romar asserts that Dr. Fournier's opinion was "mere conjecture" because Dr. Fournier laced it with caveats that he could not know with absolute certainty whether the claimant's workplace trauma affected his vision. However, although Dr. Fournier frankly admitted that gaps in the claimant's medical records (and treatment) precluded his absolute certainty regarding the effect of the workplace trauma on the claimant's vision, he was quite clear that he saw a causal connection to a reasonable degree of medical certainty. He was also clear in explaining the factual basis for his conclusion, namely the coincident precipitous decline in the claimant's vision and the fact that the decline affected both eyes when the claimant's natural condition appeared to have had an asymmetrical effect. These opinions were the product of extrapolation from the available medical data, not of conjecture or guess, and we reject Romar's argument to the contrary.

¶ 15 Romar also argues that Dr. Fournier's testimony should have been disregarded because it fails the test articulated in *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923). See *In re Commitment of Simons*, 213 Ill. 2d 523, 529, 821 N.E.2d 1184 (2004) (stating that Illinois uses the Frye test to test the admissibility of expert testimony). The Frye test "dictates that scientific evidence is admissible at trial only if the methodology or scientific principle upon which the opinion is based is 'sufficiently established to have gained general acceptance in the particular field in which it belongs.'" *Simons*, 213 Ill. 2d at 529-30, quoting *Frye*, 293 F. at 1014. Even if we were to assume that Romar had not forfeited this argument for failing to press it before the arbitrator or the Commission, we would disagree. Although Romar quotes the Frye test, the only untested "methodology" or "scientific principle" it identifies is Dr. Fournier's opinion that trauma may have affected the claimant's vision, an opinion that the parties' experts both disputed. Romar does not dispute, nor could it dispute, that Dr. Fournier's methodology—reviewing the medical records and drawing conclusions regarding causation based on his own medical knowledge—is

generally accepted. Thus, although Romar invokes the Frye test, its Frye argument is no more than a challenge to Dr. Fournier's ultimate expert conclusion. For that reason, we reject Romar's argument that the Commission erred in considering Dr. Fournier's opinions without first conducting a Frye hearing.

¶ 16 Romar's second contention of error on appeal is that the Commission erred in lending credence to Dr. Fournier's expert opinions to find that there was a causal relationship between the claimant's workplace accident and his visual impairment. 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 determination 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). Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's determination of a question of fact is against 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, 440 N.E.2d 90 (1982).

¶ 17 Here, there was more than sufficient evidence to support the Commission's causation finding. Although Romar introduced expert testimony that trauma would not accelerate or affect cone dystrophy, the claimant's expert pointed out that Romar offered no other explanation for the claimant's rapid loss of vision. As noted above, the claimant's expert also pointed out that the claimant's loss in vision appeared to coincide with his workplace accident, and that the progression of the claimant's loss of vision appeared to affect both eyes strongly after the accident even though deterioration was asymmetrical prior to the accident. The Commission relied on

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these opinions, as well as evidence that the claimant was able to drive a car very shortly before the accident but was unable to do so very shortly after. Based on all this evidence, we cannot say that the Commission's decision to adopt Dr. Fournier's causation opinion was against the manifest weight of the evidence.

¶ 18 For these reasons, we affirm the judgment of the circuit court, which confirmed the decision of the Commission.

¶ 19 Affirmed.