

2011 Ill. App. (3d) 100755WC-U  
No. 03-10-0755WC  
Order filed November 16, 2011

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

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ANTHONY L. SMITH,	)	Appeal from the Circuit Court
	)	of Marshall County.
Petitioner-Appellant,	)	
	)	
v.	)	No.    09-MR-17
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION DIVISION	)	
	)	Honorable
	)	Scott A. Shore,
(Davis-J.D. Steel, LLC, Respondent-Appellee).	)	Judge, Presiding.

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

**ORDER**

*Held:* The decision of the Commission that claimant failed to prove his condition is causally related to his employment is not contrary to the manifest weight of the evidence.

¶ 1 Claimant, Anthony L. Smith, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2006)) alleging he sustained an injury to his left arm while in the employ of respondent, Davis-J. D. Steel, LLC. The arbitrator

found that claimant had not carried his burden of proving his condition of ill-being is causally related to his employment. The Commission affirmed and adopted the decision of the arbitrator, and the circuit court of Marshall County confirmed the Commission's decision. For the reasons that follow, we affirm.

¶ 2

## BACKGROUND

¶ 3 The following evidence was produced in the arbitration hearing below. Claimant testified that he had been employed as an ironworker for 22 years. In June 2007, he had been sent from his union hall to work for respondent. Prior to that, he had been working for Christy-Foltz. Claimant was working placing rebar for the foundations of windmills. This job required claimant to work with pieces of rebar that were bigger than the ones with which he normally worked. The rebar used on this job had a diameter of two-and-one-half inches and was 40 feet long. Generally, according to claimant, two or three people would lift pieces of that size. Claimant was expected to work 12 hours per day, seven days per week.

¶ 4 On June 2, 2007, claimant and another person were carrying a piece of rebar on their shoulders. The other person dropped his end, and claimant was forced to bear the load. Claimant testified that it "banged [his] arm up." At least two other workers were present at the time of the incident. Claimant experienced pain running down his arm through his elbow and to his pinky and index finger. This pain was unlike any he had felt before.

¶ 5 Claimant testified that respondent had a plan under which an incentive was awarded if there were no injuries on a particular job. Therefore, claimant did not tell his supervisor of the incident until another worker was injured on the job. Claimant added that he did not "think it was that bad"

so he kept working. After learning of the incident, claimant's supervisor directed claimant to keep working, but to seek medical attention if things got worse.

¶ 6 Previously, when working for Christy-Foltz, claimant injured his neck when he was "taking a beam out," "slipped," and "kind of pulled it." He did not report this injury because, he explained, he gets "a lot of cuts and bumps" and he did not "feel [he] was injured that bad." Though claimant initially felt he did not need treatment, a few days later, he went to the emergency room at the Memorial Medical Center in Springfield. Claimant's individual health plan provided coverage, and claimant never informed anyone at Christy-Foltz of the injury. This injury resulted in claimant experiencing pain in his shoulder blade and neck, but no pain radiating into his arm. Prior to working for respondent, claimant never experienced numbness or tingling in his arm.

¶ 7 Three days after the incident of June 2, 2007, claimant sought treatment at the Memorial Medical Center emergency room. His arm was numb, and it tingled. Claimant could not turn his head fully to the left. Claimant was also seen at Proctor First Care at the direction of his supervisor (Proctor appears to be some type of provider of occupational health services), where he was placed under some work restrictions. Claimant was given work picking up garbage.

¶ 8 Claimant returned to Memorial Medical Center after being on light duty for "a couple days." He asked to see another doctor and was directed to Dr. Sheedy. Sheedy took claimant off work completely. He also referred claimant to Dr. Macgregor. An MRI was ordered. Macgregor recommended physical therapy, but respondent's workers' compensation insurance carrier denied it. Claimant received three epidural injections, which provided relief. Claimant also saw Dr. Shea in Chicago, who conducted an examination of him on respondent's behalf. Macgregor

recommended a functional capacity evaluation (FCE). That, too, was denied by respondent's workers' compensation insurance carrier.

¶ 9 Claimant testified that he did not have any prior problems with his neck before working for Christy-Foltz. He stated he never received any previous medical treatment on his neck. Claimant could not recall being seen at a hospital in 2001 and having X rays performed for neck pain. However, in 2007, following a St. Patrick's Day parade, claimant did seek treatment for his arm. Claimant explained that he had carried a baby in the parade and he thought his arm was tired. Claimant experiences ongoing pain in his shoulder blade—which runs down his arm—from this incident. Claimant further acknowledged that he tore a tendon in his wrist in 2003.

¶ 10 During cross-examination, claimant clarified that the incident that occurred on June 2 took place in the morning and he informed his supervisor in the afternoon. Claimant worked from the time of the incident until he sought treatment on June 5. Claimant thought that he had worked light duty during this period. Claimant admitted that when he went to Proctor, he was given a drug screening test, which indicated the presence of cocaine metabolites. Respondent took no adverse employment action against claimant based on the drug screening. Claimant agreed that he had sought treatment from Midwest Occupational Health Associates (MOHA), where he told them that respondent had no light-duty work for him and he requested an off-work slip. The doctor he saw declined to do so and told claimant that he though claimant could perform light duty. Claimant then saw Sheedy, who placed claimant off work. Claimant explained that part of the restrictions from Proctor included limiting driving to one-half hour. Respondent's job site was an hour-and-a-half drive.

¶ 11 Claimant also acknowledged that he had been to the emergency room on May 9, 2007, complaining of neck pain. At this time, claimant reported to the doctor that he had pain radiating down his left arm when he moved it and that it exacerbated his neck pain. Claimant testified that it was actually pain in his neck and shoulder rather than down his arm. Claimant denied that the pain he experienced after the St. Patrick's Day parade radiated down his arm. During direct examination, claimant had testified that following the parade, the pain "runs down my arm." The arbitrator asked claimant about this discrepancy, and claimant clarified that following the parade, pain did go down his arm, but it did not go down to his elbow or fingers, like it did after the incident of June 2, 2007.

¶ 12 Claimant agreed that on May 9, 2007, he went to the Memorial Medical Center after he fell while carrying a beam and strained his neck and shoulder as he tried to keep hold of the beam. Claimant stated that this accident did not cause numbness or tingling. When asked about a notation in the records from the May 9 emergency-room visit that indicated that claimant had been to an emergency room on four occasions, claimant stated, "Okay, then, that's how many times I went." There were, however, no records of these visits. Claimant also thought that he had gone to the emergency room between May 9, 2007, and the date he was injured while working for respondent. However, he also stated that he did not think that he had been to the Memorial Medical Center during this period.

¶ 13 Claimant acknowledged that when he first saw Dr. Macgregor, he told her that he had never been injured prior to the incident on June 2. He explained that the reason he did this was because he had never reported any earlier injuries as work related, so he "didn't consider it an injury."

Though he did not recall specifically, claimant did not dispute medical records that indicated that he had sought treatment on October 17, 2001, for neck pain or that X rays were performed at that time.

¶ 14 On June 13, 2007, claimant sought treatment at MOHA. He filled out an intake form, circling “no” where it asked whether claimant had had any injury to his neck or back or any kind of a neck or back condition. Claimant again stated that he did not believe he had prior injuries because he had not claimed them as work related.

¶ 15 During redirect examination, claimant stated that following the St. Patrick’s Day parade, he experienced pain in his neck, the back side of his shoulder and “down into [his] arm (Indicating) into the elbow (Indicating).” He experienced no tingling. Further, claimant noted that he had told several doctors as part of the history that he provided them that he had seen his own doctors on his own time on various occasions. Following his May 9 injury at Christy-Foltz, claimant continued to experience pain in his neck throughout the completion of that job. He was, nevertheless, able to do everything required of him as an ironworker. Conversely, after the incident on June 2, claimant felt something different. On recross-examination, claimant stated that he felt numbness and tingling immediately following the incident.

¶ 16 Todd Purham, a coworker of claimant’s, testified by evidence deposition. He was working with claimant on the date of the incident. Purham did not actually see the incident, but he heard it. Before the incident, claimant was physically able to perform his job. Purham stated that claimant is a “horse” and that “he’s pretty strong,” “probably twice as strong as I am.” After the incident, claimant “didn’t really do anything” and “just, like, hung out.” After that day, Purham did not see

claimant anymore, except for about four days later when claimant came back and tried to work. Purham also stated that the company had contemplated making claimant a foreman.

¶ 17 Claimant's supervisor, Brian Kramer, also testified *via* evidence deposition. Kramer testified that he first learned of the incident several days after it occurred. Kramer recalled that an apprentice had claimed he hurt his back about the same time. Kramer offered claimant a light-duty position for 40 hours per week. Claimant stated he did not want it as it was too expensive for him to drive to the job for that limited amount of time. During cross-examination, Kramer denied the existence of an incentive based on not having any injuries on a job. Kramer stated that prior to the incident, he "wasn't really satisfied with [claimant's] work" (he later explained that claimant was physically able to do his work but was not good at following directions). Kramer acknowledged that when claimant told him he would not drive to the job site for only eight hours of work per day, claimant explained that his drive was one-and-one-half hours, that it bothered his neck, and that the doctor at Proctor told claimant not to be sitting in a car for that long. According to Kramer, claimant told him that he injured himself pulling on a piece of rebar rather than while carrying a piece with a coworker who dropped it.

¶ 18 Claimant also submitted the evidence deposition of his neurosurgeon, Dr. Margaret Macgregor. Macgregor first saw claimant on August 13, 2007, after a referral from his family physician, Dr. Sheedy. Claimant told Macgregor that prior to June 2007, "he had no complaints, had never been hurt, [and] never had an MRI." He reported being injured while lifting a 40-foot-long piece of rebar. Claimant told Macgregor that his condition was worsening despite not working. A physical examination revealed "decreased sensation of pinprick on the left in the C8 distribution";

“Weber lateralizes to the left”; “decreased strength in the left biceps, brachioradialis and left wrist extensors.” Claimant exhibited “mildly decreased reflexes throughout.” Macgregor stated that claimant’s “[c]ervical range of motion was mildly restricted.” An MRI showed “a rather marked degree of degeneration for a 42-year-old.” Macgregor could not tell whether any changes in claimant’s back were “acute or chronic in nature.” The changes she observed were of the sort that could cause the symptoms claimant was experiencing. Macgregor testified that claimant “doesn’t have the medical sophistication to disassemble,” that is, “[h]e doesn’t have the education in order to fake a cervical radiculopathy.”

¶ 19 Macgregor further testified that she had not reviewed any of claimant’s medical records. However, claimant’s attorney related the history surrounding the incident on June 2, and Macgregor stated that his symptoms were consistent with it. She opined that claimant’s condition could have been aggravated by the incident that took place on June 2. It was also her opinion that claimant should not be working as an iron worker.

¶ 20 During cross-examination, Macgregor testified that when a person aggravates a degenerative condition, it can begin with pain in the neck and shoulder and then eventually radiate into the arm. The symptoms claimant experienced from the May 9 incident are consistent with aggravating a pre-existing cervical spine condition. Further, Macgregor opined that it was possible that the symptoms for which she treated claimant could have been the result of the May 9 incident. She stated she did not have enough information to state with certainty that the condition for which she treated claimant was causally related to the work he did for respondent as opposed to the injury he suffered while working for Christy-Foltz. Macgregor noted that the findings from the examination in May were

“less severe” and may “represent the beginning of what was going on.”

¶ 21 On redirect, Macgregor testified that had the incident in May resulted in a significant aggravation of claimant’s condition, she did not believe he would have been able to continue working for Christy-Foltz. He might, however, have been able to continue working with a minor aggravation. She also opined that the symptoms reflected in a note generated during the visit to the emergency room on June 5, 2007, suggested a problem arising immediately before that visit. Finally, during recross, Macgregor opined that if, as the note from June 5 states, claimant had made four visits to emergency room following May 9, it would suggest that the problem arising on May 9 had not resolved. However, she also opined that even given this history, the June 2 incident could still have aggravated claimant’s condition.

¶ 22 Respondent presented the evidence deposition of Dr. John Shea, who examined claimant on respondent’s behalf. When Shea first saw claimant, claimant told him that he had been injured on June 2, 2007, and that before this date, he had gone to hospitals and doctors for back pain but never had reported an injury to an employer. Claimant described how the injury occurred. According to claimant, he now cannot turn his head to the left without experiencing pain, get a hair cut, or lean his head back to brush his teeth. Claimant reported pain, numbness, and tingling in his “left C8 distribution.” Shea stated that claimant’s left hand is weak and he “described his pain as constant.”

¶ 23 Shea conducted a physical examination. Claimant exhibited a loss of sensation in his left extremities. Reflexes and strength were normal, and Shea noted no spasms when he palpitated claimant’s neck. Claimant had a “severe limitation of motion” in that “[h]e could go 20 degrees right, 10 degrees left.” Lateral flexion was also limited, but forward flexion and hyper extension

were “pretty normal.” Spurling’s test was negative, and claimant exhibited no Tinel’s sign. Shea found it “fairly odd” that claimant lacked spasms in the neck but had a severely limited range of motion.

¶ 24 Shea reviewed claimant’s medical records. He noted a “long history of problems with the neck, maybe dating back to 2001.” Claimant had been seen in emergency rooms “a number of times.” Shea went through the neurological examinations from these visits and found them normal. Shea noted that during his May 9, 2007, visit to the emergency room, no neurological abnormalities were discovered. He believed that claimant may have had a cervical strain at that time and noted that was the diagnosis from the emergency room.

¶ 25 Shea diagnosed claimant with “cervical strain by history.” He opined that claimant’s prognosis was good. He believed claimant should undergo an FCE. Any further recommendations would be based on the results of that examination, but Shea did not believe claimant had suffered a permanent injury. The manner in which claimant was injured was consistent with a cervical strain. However, Shea testified that he could not say whether claimant’s condition was related to the incident of June 2 or May 9.

¶ 26 During cross-examination, Shea testified that the subjective complaints claimant related to him were not “out of the ordinary” for a person with “either a cervical sprain, strain, or cervical radiculopathy.” Some drugs that claimant was taking for other conditions could affect a person’s affect and perception of pain. Shea examined claimant about 3 p.m., and claimant had driven to the examination. Shea agreed that a three-hour car ride could affect an examination, but noted that it would not only affect subjective sensory abnormalities. Claimant reported paresthesias in the pinky

and ring finger. Shea stated that this could be consistent with certain complaints claimant made to Macgregor. Further, claimant reported that he felt better when lying down, which was inconsistent with a cervical strain, as people extend their necks when they lie down. Shea characterized Macgregor's findings regarding weakness in the biceps, brachioradialis and left wrist extensors as objective. He agreed with Macgregor's opinion that claimant was not capable of faking cervical radiculopathy. Shea testified that both the May 9 incident and the June 2 incident could be contributing factors to claimant's condition. With the exception of stating that one whole side of his body was numb, Shea believed claimant was a "pretty forthright guy." On redirect, Shea testified that "[i]t would be uncommon for somebody to make four trips to the emergency room if they said their pain was resolving."

¶ 27 The arbitrator found that claimant did not prove that he sustained injuries in the course of and arising out of his employment with respondent. After recounting the evidence presented in the arbitration hearing, she found that claimant "had prior cervical spine injuries on May 9, 2007 and radiating arm symptoms [that] dated back to [March 17, 2007]." She noted that the histories provided by claimant were "inconsistent and that his testimony is confusing as well." The arbitrator then found that claimant "may well have suffered symptoms while performing his work on June 2, 2007 but those symptoms are consistent with the pre-existing condition of his cervical spine." She then held that claimant "has failed to sustain his burden to prove that he had anything more than a symptomatic exacerbation of his condition on that date." Accordingly, the arbitrator denied compensation. The Commission affirmed and adopted the arbitrator's decision in its entirety, and the circuit court of Marshall County confirmed its decision. This appeal followed.

¶ 28

ANALYSIS

¶ 29 This appeal presents a single issue: whether the Commission's decision is contrary to the manifest weight of the evidence. We will not find that decision of the Commission on an issue of fact to be contrary to the manifest weight of the evidence unless an opposite conclusion is clearly apparent. *Copperweld Tubing Products, Co. v. Workers' Compensation Comm'n*, 402 Ill. App. 3d 630, 633 (2010). Moreover, it is primarily the role of the Commission, as trier of fact, to assess the credibility of witnesses and to weigh and resolve conflicts in the evidence. *Alexander v. Industrial Comm'n*, 314 Ill. App. 3d 909, 915 (2000). At the arbitration hearing, claimant bore the burden of proving his entitlement to compensation. *Navistar International Transportation Corp. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1202 (2000). Furthermore, before this court, claimant—as the appellant—bears the burden of establishing error in the proceedings below. *Lenny Szarek, Inc. v. Illinois Workers' Compensation Comm'n*, 396 Ill. App. 3d 597, 606 (2009).

¶ 30 One of the elements claimant was required to establish at the arbitration hearing was causation. See *First Cash Financial Services v. Industrial Comm'n*, 367 Ill. App. 3d 102, 107 (2006). To fulfill this burden, a claimant must show that his or her injury arose out of and occurred in the course of employment. *Beattie v. Industrial Comm'n*, 276 Ill. 2d 446, 449 (1995). The arising-out-of element “means there is a causal connection between the accidental injury and some risk incidental to or connected with the activity an employee must perform to fulfill his duties,” while the in-the-course-of requirement “refers to the time, place and circumstances under which the accident occurred.” *Beattie*, 276 Ill. 2d at 449. Further, a claimant must show that employment is causally related to the condition of ill-being for which the claimant is seeking compensation. See

2011 Ill. App. (3d) 100755WC-U

*St. Elizabeth's Hospital v. Illinois Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 887 (2007). Moreover, it is well established that, for a claimant to recover, employment need not be the sole cause or even principle cause of so long as it is a cause. *Certified Testing v. Industrial Comm'n*, 367 Ill. App. 3d 938, 944 (2006). Causation is a question of fact. *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36-37 (1982).

¶ 31 The chief problem for claimant is not that he set forth no evidence to establish causation; it is that the arbitrator found that he lacked credibility (a finding adopted by the Commission). She specifically found that the histories claimant related regarding his condition were “inconsistent” and that his testimony was “confusing.” Notably, Macgregor specifically stated that her opinion regarding causation was based on the history provided by claimant. As the arbitrator questioned the reliability of the histories provided by claimant, this was also then a reason to question Macgregor’s opinion as well. Indeed, claimant initially told Macgregor that he had never been injured. Claimant attempted to explain why he told this to Macgregor, but the arbitrator was not required to accept his explanation. Thus, the arbitrator had ample reason to question claimant’s credibility. We also note that Shea’s testimony undermined claimant’s to a degree, such as his opinion that claimant’s limited range of motion of his neck was inconsistent with claimant having no spasms when Shea palpitated claimant’s neck. In sum, the evidence provided by claimant was not so compelling that the arbitrator was required to accept it. We cannot say her assessment of claimant’s credibility is against the manifest weight of the evidence, nor can we make such a finding regarding her ultimate decision.

¶ 32 One additional issue requires comment. In issuing her decision, the arbitrator wrote:

“The Arbitrator further finds that [claimant] may well have suffered symptoms while performing his work on June 2, 2007 but those symptoms are consistent with the pre-existing condition of his cervical spine. [Claimant] has failed to sustain his burden to prove that he had anything more than a symptomatic exacerbation of his condition on that date.”

Based on this language, claimant concludes that the arbitrator subjected his claim to some heightened burden of proof where he was required to prove more than a symptomatic exacerbation of his pre-existing condition. He asserts that since, by implication, he did prove a symptomatic exacerbation, he should be able to recover since employment need only be a cause of his condition (*Certified Testing*, 367 Ill. App. 3d at 944). We disagree. Read in context, it is clear to us that what the arbitrator is saying is that while claimant may have suffered some discomfort as a result of his employment coupled with the pre-existing condition of his cervical spine, he did not prove that his employment with respondent resulted in any more than transient pain. As such, once those symptoms diminished, his employment with respondent had no causal relationship to claimant’s current condition of ill-being.

¶ 33 We find considerable guidance on this issue from *Bernardoni v. Industrial Comm’n*, 362 Ill. App. 3d 582, 598 (2005). In that case, the claimant suffered from a pulmonary condition. The claimant presented expert testimony that the condition was caused by exposure to chemicals in her workplace, and her employer’s experts testified that claimant’s condition was caused by her smoking. The Commission found that claimant’s “exposure to the cleaning chemicals temporarily exacerbated her underlying pulmonary condition.” *Bernardoni*, 362 Ill. App. 3d at 598. This court noted the following: “There is evidence to support this position. [One of the doctors testifying for

the employer] opined that claimant suffered from a mild underlying pulmonary obstructive disease that was probably secondary to her smoking and appeared to suffer an exacerbation of her underlying disease when exposed to the cleaning solutions.” *Bernardoni*, 362 Ill. App. 3d at 598. We then affirmed the Commission’s denial of permanent partial disability benefits, explaining, “Although the evidence potentially supports other explanations of claimant's symptoms, the Commission's finding on this issue is not against the manifest weight of the evidence.” *Bernardoni*, 362 Ill. App. 3d at 598. In other words, we concluded that the mere fact that there was some passing exacerbation of the claimant’s condition while she was at work did not require a finding that there was a causal relationship between claimant’s condition and her employment.

¶ 34 In light of *Bernardoni*, the arbitrator’s finding (as adopted by the Commission) that claimant proved nothing more than a “symptomatic exacerbation” does not compel an award of benefits to claimant. Quite simply, the mere fact that claimant may have experienced symptoms related to his preexisting condition does not establish a causal relationship between his employment with respondent and his condition of ill being. Indeed, we note that in *Bernardoni*, 362 Ill. App. 3d at 598, the Commission actually found that the claimant’s condition was exacerbated by chemicals she encountered at her place of employment. Here, the language that claimant points to does not mention causation—only that claimant suffered symptoms while at work. That claimant suffered symptoms while at work establishes causation no more than suffering symptoms while shopping for groceries would establish causation between claimant’s condition and grocery shopping. We therefore reject claimant’s argument on this point.

¶ 35

#### CONCLUSION

2011 Ill. App. (3d) 100755WC-U

¶ 36 In light of the foregoing, the judgment of the circuit court of Marshall County confirming the decision of the Commission is affirmed.

¶ 37 Affirmed.