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IN THE APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

Workers' Compensation Commission Division

JILLIAN KEPP,)	Appeal from the Circuit
)	Court
Petitioner-Appellee,)	of DeKalb County.
)	
v.)	
)	No. 09—MR—98
WORKERS' COMPENSATION COMMISSION)	
and WAL-MART,)	Honorable
)	Kurt P. Klein,
Respondents-Appellants.)	Judge, Presiding.

PRESIDING JUSTICE McCULLOUGH delivered the judgment of the court.
Justices Hoffman, Hudson, Holdridge and Stewart concurred in the judgment.

ORDER

Held: The Circuit Court of DeKalb County erred by reversing the decision of the Workers' Compensation Commission (Commission), which found employee's left hip condition of ill-being, medical treatment after April 18, 2005, and recommended prospective medical treatment were the result of a preexisting condition and not a work-related accident.

On February 16, 2006, claimant, Jillian Kepp, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2004)), seeking benefits from employer, Wal-Mart. Following a hearing, the arbitrator determined claimant proved she sustained accidental injuries that arose out of and in the course of her employment on April 1,

2005. He awarded claimant \$3,145.70 for medical expenses and ordered employer to pay "expenses for recommended injections and/or surgery to [claimant's] left hip and postoperative care to repair [a] labral tear ***."

The Commission modified the arbitrator's decision, finding claimant's April 2005 accident was causally connected to only her right hip pain and nothing more. It concluded the medical treatment rendered to claimant after April 18, 2005, as well as prescribed surgery for a left hip labral tear, was not causally connected to her work-related accident. The Commission remanded to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980). On judicial review, the circuit court of Dekalb County reversed the Commission's decision, finding it was against the manifest weight of the evidence, and reinstating the arbitrator's award. Employer appeals, arguing the Commission correctly found claimant's left hip condition of ill-being; medical treatment she received April 18, 2005; and prospective medical treatment related to her left hip were unrelated to her April 1, 2005, work-related accident. We reverse the circuit court's decision, reinstate the Commission's decision, and remand for further proceedings.

The parties are familiar with the evidence presented and we will discuss it only to the extent necessary to put their arguments in context. Briefly stated, claimant suffered from congenital hip dysplasia, requiring frequent medical care. In May 2004, she began working for employer in its deli. On April 1, 2005, claimant slipped and fell at work. She has alleged injuries to both hips as a result of her fall.

On appeal, employer contends the Commission's decision was correct and not against the manifest weight of the evidence. It argues claimant's condition of ill-being was causally connected

to her congenital hip dysplasia rather than her April 2005 fall at work. Employer further maintains neither medical treatment claimant received after April 18, 2005, nor the prospective medical treatment for her left hip recommended by her treating physicians was causally connected to her work accident.

"Whether a causal relationship exists between a claimant's employment and his injury is a question of fact to be resolved by the Commission, and its resolution of such a matter will not be disturbed on appeal unless it is against the manifest weight of the evidence." *TTC Illinois, Inc./Tom Via Trucking v. Illinois Workers' Compensation Comm'n*, 396 Ill. App. 3d 344, 356, 918 N.E.2d 570, 580 (2009). "For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent." *TTC Illinois*, 396 Ill. App. 3d at 356, 918 N.E.2d at 580. The appropriate test is whether the record contains sufficient evidence to support the Commission's decision. *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866, 923 N.E.2d 870, 877 (2010).

"In resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674, 928 N.E.2d 474, 482 (2009). "Interpretation of medical testimony is particularly within the province of the Commission." *Freeman United Coal Mining Co. v. Workers' Compensation Comm'n*, 386 Ill. App. 3d 779, 783, 901 N.E.2d 906, 910 (2008).

Claimant asks this court to "revisit the issue of the appropriate standard of review" in situations where the Commission overturns a decision of the arbitrator. She suggests a reviewing court "should adopt a standard of review that gives some consideration to the decision of the

arbitrator below where the Commission overturns that decision in cases involving the issue of a causal relationship between an undisputed accident and an undisputed diagnosis of injury."

This court recently declined a similar request to abandon the deferential standard of review applied in favor of the Commission when its credibility findings differ from those of the arbitrator. *Hosteny*, 397 Ill. App. 3d at 675-76, 928 N.E.2d at 482-83. We noted "our supreme court has consistently held that when the Commission reviews an arbitrator's decision, it exercises original, not appellate, jurisdiction and that the Commission is not bound by the arbitrator's findings." *Hosteny*, 397 Ill. App. 3d at 675, 928 N.E.2d at 483. For the reasons expressed in *Hosteny*, the appropriate standard of review is whether the Commission's decision is against the manifest weight of the evidence and we decline to apply a less deferential standard of review to the Commission's factual determinations.

Here, the record contains sufficient evidence to support the Commission's decision that claimant's condition of ill-being in her left hip and medical care after April 18, 2005, including recommended prospective medical treatment, were not causally connected to her April 2005 work accident. First, the record supports a finding that claimant's work accident temporarily aggravated the condition of ill-being in only her right hip. Claimant suffered from congenital bilateral hip dysplasia, a condition that preexisted her work accident. Prior to April 2005, she received medical treatment for her condition. That treatment extended to March 18, 2005, just weeks before claimant's April 1, 2005, fall at work. Although claimant testified she felt pain in both hips after falling, she agreed that she felt the most pressure in her right hip and experienced right-hip pain when she sought emergency room treatment.

Emergency room records from the date of the accident show claimant reported she fell at work onto her right hip. Her chief complaint was right-hip pain. On April 7, 2005, claimant returned to Dr. Steven Glasgow, whom she had seen in connection with her hip dysplasia, and provided a history of her fall at work. Again, her complaints centered on her right hip. Dr. Glasgow noted claimant had an "irritated right hip" and testified claimant's fall exacerbated the condition of her right hip. On April 14, 2005, claimant followed up with Dr. Glasgow and reported her hips had returned to baseline status and she was no longer using crutches. On May 18, 2005, claimant saw Dr. John Clohisy pursuant to an appointment scheduled before her work accident and in connection with her hip dysplasia. Claimant did not provide a history of her April 2005 fall at work.

Second, the medical opinion offered by claimant to support causation was uncertain. Dr. Glasgow spoke only in terms of possibilities when providing his opinion on claimant's injury and its link to her employment. He found her left-sided labral tear "could" be related to her fall at work. During his deposition, Dr. Glasgow testified claimant's labral tear "certainly might or could be related to [her] fall." However, he acknowledged that it was possible for someone with claimant's preexisting hip dysplasia to develop a degenerative labral tear. He further admitted that it was "possible" that claimant's labral tear preexisted her April 2005 work accident, stating he did not "really know" whether the labral tear preexisted her accident.

Alternatively, Dr. Joshua Jacobs, who examined claimant at employer's request, opined claimant's condition of ill-being was not causally connected to her employment. He noted claimant's report to Dr. Glasgow on April 14, 2005, that she had returned to baseline status. Further, Dr. Jacobs opined claimant would have experienced immediate pain symptoms in her left hip if her labral tear

was related to her fall at work. Medical records show claimant's pain complaints after her fall centered on only her right hip.

Evidence in the record supports the Commission's finding that claimant's left hip condition of ill-being, medical treatment after April 18, 2005, and recommended prospective medical treatment were the result of her preexisting bilateral hip dysplasia rather than her work accident. Its decision was not against the manifest weight of the evidence and the circuit court erred by reversing the Commission's decision.

For the reasons stated, we reverse the circuit court's judgment, reinstate the Commission's decision, and remand for further proceedings.