

NOTICE
Decision filed 06/27/11. 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.

No. 1-10-0609WC

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).

Workers' Compensation
Commission Division
Filed: June 27, 2011

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

JUAN RODRIGUEZ,)	APPEAL FROM THE
)	CIRCUIT COURT OF
Appellant,)	COOK COUNTY
)	
v.)	No. 08 L 50415
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, <i>et al.</i> ,)	
(CHICAGO PARK DISTRICT,)	HONORABLE
)	ELMER JAMES TOLMAIRE, III,
Appellees).)	JUDGE PRESIDING.

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

O R D E R

HELD: The finding of the Illinois Workers' Compensation Commission that the claimant failed to establish a causal connection between his current condition of ill-being and his work-related accident of May 1, 2003, and its decision to deny the claimant permanent partial disability benefits under the Workers' Compensation Act are not against the manifest weight of the evidence.

The claimant, Juan Rodriguez, appeals from a decision of the

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Circuit Court of Cook County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission), denying him permanent partial disability benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2004)) for injuries which he allegedly received while working for the Chicago Park District (the Park District). For the reasons which follow, we affirm the judgment of the circuit court.

The following factual recitation is taken from the arbitration hearings on November 15 and December 10, 2004, and April 6, 2005 held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2004)); the December 18, 2006, arbitration hearing on remand from the Commission; and the records related thereto.

The claimant, who had worked as a carpenter for the Park District, testified that, on May 1, 2003, he hurt his shoulder at work while attempting to unload lumber. On June 30, 2003, after conservative treatment failed, the claimant underwent an MRI that revealed a rotator cuff tear. The claimant underwent surgery to repair his rotator cuff on July 22, 2003, and, from September until December of that year, the claimant attended physical therapy on the recommendation of his surgeon, Dr. Edward Sclamberg. In his deposition testimony, Dr. Sclamberg opined that the claimant's condition improved with physical therapy. Dr. Sclamberg said that, in December 2003, he changed his recommendation from formal physical therapy to another type of therapy called "work hardening," but he recalled that the

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claimant did not attend work hardening. Dr. Sclamberg said that, by January 6, 2004, the claimant's condition had continued to improve and the claimant's shoulder had regained its normal strength and essentially normal range of motion. On that day, Dr. Sclamberg authorized the claimant to return to normal work. The claimant testified, however, that he was unable to return to work the next day, because the Park District placed him on administrative leave at that time. Dr. Sclamberg testified that he released the claimant from his care after a February 2004 treatment visit. In his testimony, Dr. Sclamberg said that he believed the claimant had reached maximum medical improvement by February 2004 and that the claimant did not require further physical therapy or work hardening. In March 2004, the Park District terminated the claimant's employment.

At his attorney's suggestion, the claimant saw Dr. William Imlach in March 2004. In his testimony, Dr. Imlach recalled that the claimant presented with limited range of motion in his shoulder and some shoulder weakness. Dr. Imlach testified that the claimant could work with some restrictions.

In May 2004, the claimant saw Dr. Pietro Tonino, who, the claimant testified, noted that the claimant complained of shoulder pain and weakness and recommended physical therapy. The claimant testified that he did not follow the suggestion to pursue further physical therapy because he could not afford the treatment. In August 2004, and again in November 2004, Dr.

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Tonino noted weakness in the claimant's shoulder and again recommended physical therapy.

At the first arbitration hearing held pursuant to section 19(b), the Park District introduced surveillance videos, taken in December 2003, depicting the defendant performing various tasks, including helping to carry items or wheeling garbage bins from one location to another. In his testimony, the claimant stated that the videos did not depict him doing anything that violated his medical restrictions.

In an August 2004 report of an examination undertaken at the Park District's request, Dr. Gregory Nicholson opined that the claimant had achieved maximum medical improvement and that his status was "quite good." Dr. Nicholson noted no signs of weakness and attributed the claimant's reported pain to the normal after-effects of his surgery. In an October 2004 addendum to his report, Dr. Nicholson stated that he had reviewed surveillance videotape of the claimant and that the footage was consistent with his conclusion that the claimant was able to perform carpentry work.

The claimant did not testify regarding his condition of ill-being at the time of the first set of arbitration hearings, but he did agree that he was receiving no medical treatment at that time.

Following the hearing held pursuant to section 19(b), the arbitrator found that the claimant had sustained injuries May 1,

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2003, arising out of and in the course of his employment with the Park District and that he was entitled to temporary total disability (TTD) benefits from the date of his injury until January 7, 2004, the date on which Dr. Sclamberg pronounced him able to return to work. The arbitrator stated that the claimant's "right shoulder condition as of February 7, 2004 [was] causally related to" his work accident but that the claimant "provided insufficient evidence to prove that [his] present worsened complaints of ill-being [were] causally related" to his workplace accident. The arbitrator further explained that she "place[d] greater weight on the opinion of the treating physician, Dr. Sclamberg" and that the video surveillance tapes showed that the claimant "was very active and able to perform various carpentry/labor duties even though he was not observed performing overhead activities." The arbitrator also noted that "Dr. Tonino did not review the treating records and was not asked for a causal connection opinion." In addition to TTD and medical payments, the arbitrator ordered the Park District to pay the claimant a \$2,500 penalty for its termination of the claimant's TTD benefits.

The Park District sought review of the arbitrator's decision before the Commission. The Commission, with one commissioner dissenting, vacated the section 19(1) penalties and affirmed and adopted the arbitrator's decision in all other respects. The Commission remanded the cause to the arbitrator for determination

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of the claimant's entitlement to permanent disability or any further TTD pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980). The parties did not appeal the Commission's decision.

At the start of the arbitration proceedings on remand, the arbitrator stated that he took "judicial notice of all proceedings prior to" the remand hearing, "including the prior arbitration decision and the prior [C]ommission level decision." The parties then agreed that the only issues presented to the arbitrator on remand were "causal connection subsequent to April 6th, 2005," (the date of the last arbitration hearing) "and permanency."

In his testimony at the hearing on remand, the claimant testified that he had returned to work for the Park District on March 23, 2006, but that he was unable to perform some of the tasks which he had performed before his accident. He also testified that, in October 2006, Dr. Tonino recommended that he undergo an MRI exam. On cross-examination, the claimant agreed that the only medical treatment he had received for his shoulder from April 2005 until October 2006 was the single visit to Dr. Tonino. He also agreed that, prior to his resuming work with the Park District in March 2006, he worked for six to seven months as a carpenter for another company. The only exhibit the claimant presented at the arbitration hearing on remand was a treatment note for the claimant's October 2006 visit with Dr. Tonino. That

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note reports that the claimant "still ha[d] some weakness of rotator cuff" and still had pain when reaching overhead. The only exhibit the Park District presented was a report of a medical evaluation the claimant underwent just before rejoining the Park District. That medical evaluation report indicates that the claimant had full range of motion in his shoulder with minimal to no discomfort.

The arbitrator began his decision on remand by adopting all prior findings in the case. The arbitrator observed that, in the prior section 19(b) proceedings, the Commission "found that the [claimant] had provided insufficient evidence to prove that his then present *** complaints of ill being were causally related to" his work accident. The arbitrator then noted the claimant's testimony that he had shoulder weakness and difficulty reaching overhead but that "[t]he only medical evidence he submitted was an [October 2006] Dr. Tonino progress note." The arbitrator found that Dr. Tonino's "findings [in the October 2006 note] *** [were] essentially unchanged from his findings [after a November 2004 examination]" and that Dr. Tonino did "did not opine on causation." Based on those facts, the arbitrator concluded as follows:

"The Commission decision herein is the law of the case. It is therefore settled that the [claimant] provided insufficient evidence to prove that as of May 12, 2005 his complaints of ill being were causally related to the work

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accident ***. What remains to be decided is whether as of [the date of the hearing on remand] his complaints *** were causally related to the work accident.

The [claimant] has presented no additional medical evidence on the issue of causation. His own testimony is virtually unchanged. Therefore the arbitrator finds that the [claimant] has not met his burden of proof."

The arbitrator declined to award the claimant any additional benefits under the Act.

The claimant sought review of the arbitrator's decision with the Commission. The Commission unanimously affirmed and adopted the arbitrator's decision.

The claimant then filed a petition for judicial review of the Commission's decision in the Circuit Court of Cook County. The circuit court confirmed the Commission's decision, and the claimant now appeals.

On appeal, the claimant first argues that the Commission was bound by the law-of-the-case doctrine to find that he had established causation. "Under the law-of-the-case doctrine, a court's unreversed decision on an issue that has been litigated and decided settles the question for all subsequent stages of the action." *Ming Auto Body/Ming of Decatur, Inc. v. Industrial Comm'n*, 387 Ill. App. 3d 244, 252, 899 N.E.2d 365 (2008). According to the claimant, when the Park District failed to seek judicial review of the Commission's finding, in its first

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decision, that he was entitled to TTD benefits for his shoulder injury, the notion that his accident caused his condition of ill-being became irrefutable law of the case.

The claimant misinterprets the Commission's original finding, which was expressly limited to his condition "as of February 7, 2004." In fact, in its original decision, the Commission went on to find that the claimant had failed to establish causation for any condition of ill-being after that date. Thus, read properly, the Commission's previous decision actually establishes the law of the case that the claimant failed to prove a causative link between his workplace accident and his condition after February 2004 (and until the end of the first set of arbitration hearings). Accordingly, we cannot agree with the claimant that the Commission's original causation finding established, as law of the case, that his shoulder problems after February 7, 2004, were causally related to his workplace accident.

For his second argument on appeal, the claimant asserts that the Commission erred in finding that he failed to establish a causative link between his workplace injury and his condition as of the time of the hearing on remand. A prerequisite to the right to recover benefits under the Act is some causal relationship between the claimant's employment and the injury suffered. *Schwartz v. Industrial Comm'n*, 379 Ill. 139, 144-45, 39 N.E.2d 980 (1942). Whether a causal relationship exists

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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). Put another way, the Commission's determination on a question of fact is against the manifest weight of the evidence when no rational trier of fact could have agreed. *Dolce v. Industrial Comm'n*, 286 Ill. App. 3d 117, 120, 675 N.E.2d 175 (1996).

Here, we cannot say that the Commission's causation finding was refuted by the manifest weight of the evidence. As the Commission observed, it had previously found that the claimant had failed to present adequate evidence to establish causation for any condition of ill-being after February 2004, and all the claimant offered on remand to supplement his inadequate evidence was his testimony and a single doctor's treatment note. The Commission explained that neither piece of evidence was persuasive on the issue of causation and thus that the claimant failed to carry his burden of proof. Given the paucity of evidence the claimant presented, we agree with the Commission's

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conclusion.

The claimant nonetheless argues that the Commission's finding must be set aside because it adopted an arbitrator's decision that "admittedly failed to review all of the medical evidence" presented at the first arbitration hearing. For his position, the claimant relies on the passage of the second arbitration ruling in which the arbitrator stated that "[t]he only medical evidence he submitted was an [October 2006] Dr. Tonino progress note." According to the claimant, this statement demonstrates that the arbitrator (and thus the Commission) overlooked all of the medical evidence that had been presented during the original arbitration proceedings. We disagree.

At the start of the arbitration hearings on remand, the arbitrator very clearly stated that he would take notice of prior proceedings in the case, and the arbitrator began his ruling by stating that he adopted the findings that resulted from that first hearing. These statements indicate unambiguously that the arbitrator reviewed the record of the first arbitration proceedings. In that context, we interpret the arbitrator's statement that Dr. Tonino's note was the claimant's "only medical evidence" to mean that the note was the only medical evidence the claimant presented at the arbitration hearing on remand, to supplement the evidence adduced at the first arbitration hearings. Indeed, the arbitrator's decision, which was adopted by the Commission, appears to be based on the idea that the

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claimant did not present sufficient evidence at the second arbitration to cure the inadequacy of his evidence at the first hearing, and it is on that basis that we uphold the Commission's decision. Because we disagree with the claimant's interpretation of the arbitrator's and the Commission's decisions, and because we agree with the Commission that the claimant presented insufficient evidence to cure the inadequacy of his causation evidence from the first arbitration proceedings, we reject the claimant's argument that we must now reverse the Commission's finding that he failed to prove a causative link between his injury and his current condition of ill-being.

For the reasons stated, we affirm the judgment of the circuit court, which confirmed the Commission's decision.

Affirmed.