

NOTICE
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No. 1-10-1704WC

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 DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

AMERICAN AIRLINES,)	Appeal from the Circuit Court
)	of Cook County.
Plaintiff-Appellant,)	
)	
v.)	No. 09—L—1332
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION and EARSY BOYKIN.)	Honorable
)	Elmer James Tolmaire, III,
Defendants-Appellees_____)	Judge, Presiding.

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

ORDER

Held: The decisions of the Workers' Compensation Commission finding a causal connection between claimant's condition of ill being and his work-related accident and awarding claimant temporary total disability are not contrary to the manifest weight of the evidence.

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Claimant, Earsy Boykin, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 et seq. (West 2006)) seeking benefits from respondent, American Airlines. In his petition, claimant alleged that he sustained an injury to his right hand that arose out of and occurred in the course of his employment with respondent. The arbitrator agreed and awarded claimant temporary total disability (TTD) benefits in the amount of \$588.19 per week for 75 6/7 weeks. The arbitrator also ordered respondent to pay an unpaid medical bill of \$4,126.11 (allowing a credit for amounts respondent had already paid) and ordered respondent to pay for medical treatment recommended by claimant's treating physician. The Workers' Compensation Commission (Commission) affirmed and adopted the decision of the arbitrator, remanding for further proceedings in accordance with *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980). The trial court confirmed, and, for the reasons that follow, we affirm.

I. BACKGROUND

Claimant remains employed by respondent. He has worked for respondent since 1990. Initially, he worked in the Chicago area, but in 2004, he was transferred to Dallas. On February 19, 2007, he was working as a fleet service clerk. His duties included handling luggage and freight. On that date, claimant testified, a bag "collapsed" on his hand. The bag had fallen from a height of about four feet and landed on the top part of claimant's right hand. Claimant explained that it struck his hand "towards the wrist area." Claimant experienced pain, and his hand swelled. Claimant testified that it looked "like a baby boxing glove."

Claimant sought treatment that day at Concentra. He attended follow-up visits on 14 occasions over the next two months. An MRI was performed on April 26, 2007, and an ultrasound was performed on May 16, 2007. Claimant stopped treating at Concentra on July 12, 2007, but he

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also saw three different providers in June and July. One of them, a Dr. Driggs, diagnosed a “crushing contusion to the wrist and hand.” Another, Dr. Bahadori indicated that claimant’s accident occurred when “bag fell on his right arm/wrist” and “[h]e snatched his right arm from underneath the bag.” Between August 2, 2007, and March 31, 2008, claimant did not receive any treatment because, he explained, respondent had denied his claim.

Claimant testified that he experiences pain in his right hand about 80% of the time. He has difficulty performing ordinary tasks, such as cooking, washing dishes, and painting (claimant testified that he is an artist). Respondent accommodated claimant for 90 days, during which he worked light duty. Claimant had not injured his right hand or experienced any problems with it prior to his accident.

During cross-examination, claimant testified that he had not worked since May 3, 2007. He had tried to do some painting, but had not sold any paintings. On August 2, 2007, claimant saw Dr. Pilatovsky, who recommended a functional-capacity evaluation (FCE). One was scheduled for August 9, but the therapist who was to perform it rescheduled. Claimant rescheduled the next FCE because he was ill. A third one was scheduled for August 28; however, that one was cancelled because claimant transferred his case from Texas to Illinois. Claimant also testified that the bags he handled in the course of his job averaged 40 to 50 pounds. He admitted that he had never actually weighed a bag.

Claimant also submitted his medical records. These included a report by Pilatovsky, in which he placed claimant at maximum-medical improvement (MMI) as of August 2, 2007, and stated that claimant “was assigned a 1% Whole Person Impairment.” The report also states that claimant cancelled the FCE scheduled for August 28, 2007, because claimant was moving out of state.

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Claimant's medical records also include the records of Dr. Charles Carroll. Carroll reviewed claimant's medical records and examined claimant. Carroll stated that claimant could work with a 10-pound lifting restriction. He believed claimant could reach MMI within six months. He diagnosed "a contusion of the right wrist and hand" and noted that claimant "also has tenosynovitis and subclinical triggering of the right index finger." Carroll opined that claimant's "need for care does relate to his industrial injury." Subsequently, Carroll reviewed the records of Dr. John Fernandez, who had examined claimant on respondent's behalf. Carroll then opined as follows:

"The patient suffered a crush type injury on 2/19/07 when a 106 pound bag fell from a 4 foot height and hit the dorsal side of the hand that was resting on an aluminum floor of the door of the aircraft carrier. [sic] Although trauma occurred to the dorsum of the hand, it appears that the hand may have been compressed between the 106 pound bag and the floor. I believe that this imparted trauma to the area of the A-1 pulley and the flexor tendon sheath. Base [sic] upon his verbal history and review of the records, I believe that the injury was at a minimum, a contributory factor that necessitates the care as defined by me and Dr. Fernandez. I believe that his inability to return to unrestricted use of the hand relates to the injury."

Respondent submitted the records of Dr. Fernandez. Fernandez diagnosed "right index finger A1 stenosing tenosynovitis." However, Fernandez stated that he could not "causally relate [claimant's] current symptoms and complaints of his right index finger A1 stenosing tenosynovitis to his work injury." Fernandez explained that there were no symptoms of such a condition following the work-place accident and based on the information he had, he saw no mechanism that would have caused claimant's condition of ill-being flowing from the accident. Fernandez opined that claimant

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could reach MMI in two to three months.

The arbitrator found that claimant's condition was causally related to his employment with respondent. He first noted Carroll's opinion that claimant's accident was a contributing factor to the injury to the A1 pulley. He then noted that Fernandez and Carroll agreed on the diagnosis of claimant's condition, and disagreed only as to causation. Fernandez opined that there were no contemporaneous symptoms and that there was no mechanism for an injury to the A1 pulley. Carroll opined that the crushing was the mechanism for the injury. The arbitrator then noted that the medical records of a Dr. Bahadori indicated that claimant was injured when a bag fell on his hand and claimant " 'snatched' his right arm from under the bag." The arbitrator further noted that records of Dr. Driggs, who treated claimant in June 2007, indicate that he diagnosed a crush injury. Thus, the arbitrator found support for Carroll's opinion and accepted it. The Commission adopted the decision of the arbitrator in its entirety and remanded in accordance with *Thomas*, 78 Ill. 2d 327. The circuit court affirmed, and this appeal followed.

II. ANALYSIS

Respondent now appeals, raising three issues. First, respondent argues that the Commission's decision regarding causation is contrary to the manifest weight of the evidence. Respondent's second argument is wholly dependent on its first argument in that respondent argues that the Commission's award of future medical expenses was improper since claimant's condition of ill being is not causally related to his work-place accident. As we reject respondent's first argument, we need not address its second argument any further. Third, respondent contends that the Commission's decision to award TTD is against the manifest weight of the evidence.

A decision is contrary to the manifest weight of the evidence only where an opposite

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conclusion is clearly apparent. *Elmhurst-Chicago Stone Co. v. Industrial Comm'n*, 269 Ill. App. 3d 902, 906 (1995). It is primarily the function of the Commission to judge the credibility of witnesses, assign weight to evidence, and resolve conflicts in the record. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). This is particularly true regarding medical evidence (see *Piasa Motor Fuels v. Industrial Comm'n*, 368 Ill. App. 3d 1197, 1206 (2006)) due to the Commission's well-recognized expertise in medical matters (see *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 407 (1984)). See also *English v. Industrial Comm'n*, 151 Ill. App. 3d 682, 686 (1986) ("Because of the Commission's expertise in the area of workers' compensation, its finding on the question of disability should be given substantial deference"). With these standards in mind, we now turn to respondent's arguments.

A. CAUSATION

It is axiomatic that to be compensable, a claimant's condition of ill-being must be causally related to his or her employment. *City of Springfield v. Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 313 (2009). Respondent's argument on causation can be summarized as follows. Respondent first notes that Carroll's opinion testimony regarding causation is dependent upon claimant's hand being compressed between the falling bag and the floor. Respondent contends that there was insufficient evidence to conclude that claimant's hand was crushed in this manner.

Respondent notes that the majority of the medical histories claimant gave to his various medical service providers did not describe a crush injury, instead simply stating that the bag struck the top of claimant's hand. While true, these histories also do not state that claimant was holding his hand out in mid-air when the bag struck it. Thus, they are ambiguous on this point, so the Commission was entitled to place no weight upon them on the question of whether claimant's hand

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was, in fact, crushed.

Respondent completely ignores the diagnosis of Dr. Driggs, upon which the arbitrator expressly relied, that claimant had suffered a “crushing contusion to the wrist and hand” and consequently “seems to have myalgia and flexor tenosynovitis.” This diagnosis was rendered in June 2007. It provides obvious support for the Commission's inference the claimant suffered a compression injury. Respondent acknowledges that claimant told Dr. Bahadori that a “bag fell on his right arm/wrist” and “[h]e snatched his right arm from underneath the bag.” We do not see how claimant could have “snatched his right arm from underneath the bag” unless his arm were resting on the floor. If the 106-pound bag had contacted claimant’s hand in mid-air, it would have simply proceeded on to the floor. Unless it drove claimant’s hand to the floor along with it, claimant would not have had an opportunity to “snatch” his hand from beneath it. Thus, Bahadori’s records provide additional support for the inference that claimant’s hand was crushed against the floor. Notably, the arbitrator also cited this passage from Bahadori’s records in support of his decision.

Further support exists in the records of Dr. Fernandez. When Fernandez examined claimant, claimant provided the following history:

“[Claimant] states that while loading baggage, a 106-pound piece of baggage fell from about a 4-foot height onto his hand sustained a dorsal impact injury while his hand was on the aluminum floor of the door of the aircraft carrier.”

Respondent attempts to impugn this account by pointing out that it was given almost a year and a half after the accident. That, however, is essentially an attack upon claimant’s credibility. Resolving such matters is primarily for the Commission (*O’Dette*, 79 Ill. 2d at 253), and we cannot say that this attack is so compelling that the Commission was required to reject this account because of it.

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Respondent also nakedly asserts that this account is contradicted by histories claimant provided to earlier providers. However, as we explain above, as we read them (apparently, as the Commission did as well), the earlier histories are generally silent as to whether the bag struck claimant's hand when it was resting on the floor or in mid-air. As such, they do not contradict the history claimant provided to Fernandez. Moreover, this account is corroborated by the records of Bahadori and Driggs.

Given that the Commission's decision is supported by the records of three doctors we cannot say that an opposite conclusion to that drawn by the Commission is clearly apparent. Hence, we cannot say that its decision is contrary to the manifest weight of the evidence. *Elmhurst-Chicago Stone Co.*, 269 Ill. App. 3d at 906. Given our holding, respondent's second argument regarding future medical expenses necessarily fails as well.

B. TTD

Respondent next contends that the Commission erred in awarding TTD for the period running from August 17, 2007, to October 14, 2008. To this end, respondent makes two arguments. First, it contends that the manifest weight of the evidence establishes that claimant had reached MMI prior to August 17, 2007. Second, it contends that claimant did not show that he was unable to work during this time. We find both arguments unpersuasive.

It is true that a claimant who reaches MMI is no longer entitled to TTD. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 542 (2007). In this case, there was conflicting medical evidence on the issue. Respondent identifies opinions from certain physicians who examined claimant that placed him at MMI prior to the time for which the Commission awarded TTD. However, neither Carroll nor Fernandez placed claimant at MMI with respect to his condition at the

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time they examined claimant. We recognize that Fernandez stated claimant was at MMI *with respect to his work-related accident*. However, this opinion was based on Fernandez's belief that claimant's condition of ill being was not causally related to that accident, a proposition which the Commission rejected. As for claimant's condition, Fernandez opined that claimant could reach MMI within two to three months after a surgery. Thus, the opinions of Fernandez and Carroll both support the Commission's determination that claimant had not reached MMI. To the extent that there was evidence to the contrary in the record, it was for the Commission to resolve the conflict (*O'Dette*, 79 Ill. 2d at 253), and we find no error in the way it did so.

Respondent also argues that claimant failed to prove he was unable to work. Indeed, to be entitled to TTD, a claimant must prove not only that he or she did not work; rather, proof that the claimant was unable to work is required. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 594 (2005). We note that a portion of respondent's argument invokes the odd-lot theory of proof. See, e.g., *Ameritech Services, Inc. v. Workers' Compensation Commission*, 389 Ill. App. 3d 191, 204 (2009) ("The claimant can satisfy his burden of proving that he falls into the 'odd-lot' category by showing diligent but unsuccessful attempts to find work or by showing that he will not be regularly employed in a well known branch of the labor market"). For example, respondent points out that claimant offered no evidence of a job search, such as job logs. Such evidence is not relevant. In *Freeman United Coal Mining Co. v. Industrial Comm'n*, 318 Ill. App. 3d 170, 179 (2000), this court held, "There is no odd-lot category for TTD, and the type of evidence needed to prove [a] claimant fits into the odd-lot category for PTD or that regular and continuous work is available to claimant is not relevant to the question of whether the claimant is entitled to TTD." See also *Sun Choi v. Industrial Comm'n*, 182 Ill. 2d 387, 397-99 (1998). Thus, we will focus upon medical

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evidence of claimant's disability.

In fact, that is the evidence on which the arbitrator focused. In support of his finding, the arbitrator noted that “[n]o one has ever released [claimant] to return to work without restriction” and that “[e]veryone has placed limitations upon what he can and cannot do.” The arbitrator concluded that claimant's “limitations would prevent him from returning to his regular job” and that “[l]ight duty is not available.” Even respondent's independent medical examiner agreed that claimant's “activity should be limited based on his current condition.”

Respondent makes much of the fact that no doctor completely limited claimant's ability to work, placing him on light-duty status. However, the mere fact that a claimant can occasionally perform some useful service does not necessarily preclude an award of TTD. *Freeman United Coal Mining Co.*, 318 Ill. App. 3d at 179. Furthermore, we have previously held that the “mere fact that a claimant is capable of light-duty work does not preclude an award of TTD.” *Residential Carpentry, Inc. v. Workers' Compensation Commission*, 389 Ill. App. 3d 975, 982 (2009), citing *Ford Motor Co. v. Industrial Comm'n*, 126 Ill. App. 3d 739, 743 (1984) (“Neither the ability to do light duty work nor the non-receipt of medical treatment, as argued by Ford, preclude a finding of temporary total disability”). Moreover, even if light-duty status would prevent claimant from being awarded TTD, the arbitrator expressly found that light-duty work was not available, and respondent does not explain why this finding is contrary to the manifest weight of the evidence (claimant testified that respondent would only accommodate a light-duty restriction for 90 days).

In sum, the Commission, relying upon the expertise it possesses in these matters (*English*, 151 Ill. App. 3d at 686), was fully capable of analyzing the various restrictions placed upon claimant by the doctors who treated and examined him and determining the extent to which claimant was

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disabled. Respondent does not address the nature of these restrictions beyond noting that claimant was placed on light-duty. As we explain above, that fact is insufficient for us to disturb the decision of the Commission. Respondent nakedly asserts that there is no evidence that claimant was unable to work; however, the restrictions themselves provide that evidence. Indeed, the Commission expressly relied upon them. Having reject both of respondent's arguments regarding TTD, we affirm the decision of the Commission on this issue.

III. CONCLUSION

For the foregoing reasons, the decision of the circuit court of Cook County confirming the decision of the Commission is affirmed, and this cause is remanded for further proceedings in accordance with *Thomas*, 78 Ill. 2d 327.

Affirmed.