

NOTICE
Decision filed 03/14/11. 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.

Workers' Compensation
Commission Division
Filed: March 14, 2011

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).

NO. 1-10-0578WC

IN THE APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

Workers' Compensation Commission Division

JOSE L. GARCIA,)	Appeal from
Plaintiff-Appellant,)	Circuit Court of
v.)	Cook County
WORKERS' COMPENSATION COMMISSION and)	No. 08L51075
ASTORIA WIRE PRODUCTS,)	
Defendants-Appellees.)	Honorable
)	Elmer James Tolmair-
)	e, III,
)	Judge Presiding.

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

ORDER

Held: The Commission's decision that claimant had reached maximum medical improvement and his condition of ill-being after a specific date was no longer causally connected to his work-related accident was not against the manifest weight of the evidence. The Commission's resulting decisions with respect to medical expenses and temporary total disability benefits were also not against the manifest weight of the evidence.

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On April 25, 2005, claimant, Jose L. Garcia, 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, Astoria Wire Products. Following a hearing, the arbitrator determined claimant sustained injuries that arose out of and in the course of his employment on February 4, 2005. He awarded claimant 92-5/7 weeks' temporary total disability (TTD) benefits and \$7,719 in medical expenses. The arbitrator also ordered employer to pay claimant's expenses for prospective medical treatment in the form of back surgery.

The Commission modified the arbitrator's decision, finding claimant reached maximum medical improvement (MMI) on February 21, 2006, and his condition of ill-being after that date was not causally connected to his work-related accident. It awarded claimant (1) 10-6/7 weeks' TTD benefits and (2) \$3,925 in medical expenses. The Commission remanded the case to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980). It otherwise affirmed and adopted the arbitrator's decision. On judicial review, the circuit court of Cook County confirmed the Commission's decision.

Claimant appeals, arguing the Commission's decision was against the manifest weight of the evidence. Specifically, he

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challenges the Commission's findings that (1) his condition of ill-being after February 21, 2006, was not causally connected to his February 4, 2005, work accident; (2) he was not entitled to an award for medical expenses incurred after February 21, 2006, or prospective medical expenses for back surgery; and (3) he was entitled to only 10-6/7 weeks' TTD benefits. We affirm.

The parties are familiar with the evidence presented and we discuss it only to the extent necessary to put their arguments in context. Claimant worked as a machine operator for employer, a manufacturer of display cases. The parties agree that, on February 4, 2005, claimant sustained back injuries that arose out of and in the course of his employment. They disagree on whether claimant's condition of ill-being after February 21, 2006, was causally connected to his work-related accident.

"Whether a causal connection exists is a question of fact for the Commission, and a reviewing court will overturn the Commission's decision only if it is against the manifest weight of the evidence." *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315, 901 N.E.2d 1066, 1081 (2009). The Commission's function is to judge witness credibility and resolve conflicts in the medical evidence. *City of Springfield*, 388 Ill. App. 3d at 315, 901 N.E.2d at 1081. Its factual findings will be found to be against the manifest weight

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of the evidence only where an opposite conclusion is "clearly apparent from the record on appeal." *City of Springfield*, 388 Ill. App. 3d at 315, 901 N.E.2d at 1081.

"It is not enough that this court or some other tribunal might come to a different result." *St. Elizabeth's Hospital v. Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 887, 864 N.E.2d 266, 272 (2007). Instead, "[i]f there is sufficient factual evidence in the record to support the Commission's determination, it will not be set aside on appeal." *City of Springfield*, 388 Ill. App. 3d at 315, 901 N.E.2d at 1081.

It is undisputed that claimant sustained an accidental, work-related injury on February 4, 2005. After that accident, he sought medical treatment for his back on a consistent basis, complaining of significant pain in his back and lower extremities. In January 2006, claimant began reporting improvement in his condition and Dr. Michael Treister recommended he "aggressively" seek employment. On February 21, 2006, claimant reported to Dr. Treister that his lower back was "feeling much better." He had no complaints of pain, weakness, or numbness. Dr. Treister discharged claimant from care and stated he "may return in the future if symptoms so require."

The record shows claimant did not seek further medical care for his back until approximately nine-and-a-half months

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later, on December 4, 2006. At that time, claimant returned to see Dr. Treister and reported that "one day while sitting in school he felt his back was very unstable/weak" and he noticed his body tilted toward the left side. As the Commission noted, Dr. Treister's records further showed claimant quit a job in June 2006, "because of low back pain" after he was "assigned to warehouse work."

Dr. Treister recommended surgical intervention and offered an opinion that causally connected claimant's December 2006, condition of ill-being, in whole or in part, to his February 2005, work-related accident. However, he also acknowledged that, prior to December 2006, claimant was never a surgical candidate and that claimant had symptoms in December 2006, that were not present in February 2006, including a prominent spine list, right radiculopathy or sciatica, and left lumbar spasms.

The Commission determined claimant reached MMI as of February 21, 2006, and his condition of ill-being after that date was not causally connected to his work-related accident. Its decision is not against the manifest weight of the evidence. Specifically, claimant sought medical treatment consistently until February 21, 2006, when he reported his condition had improved and he had no complaints. He was discharged from care and did not seek medical treatment for several months. Upon

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returning to Dr. Treister in December 2006, claimant reported new and different symptoms and, for the first time, was considered a surgical candidate. The record contains evidence to support the Commission's decision. That this or another court might have reached a different conclusion is of no consequence.

Claimant also challenges the Commission's award of medical expenses. He argues the Commission's failure to award him expenses for medical treatment after February 21, 2006, was against the manifest weight of the evidence. However, for the reasons already stated, the Commission committed no error by finding claimant's condition after February 21, 2006, was not causally connected to his work-related accident. As a result, he was not entitled to medical expenses after that date.

Finally, claimant argues the Commission's award of only 10-6/7 weeks TTD benefits from December 7, 2005, through February 21, 2006, was against the manifest weight of the evidence. He contends he was also entitled to TTD benefits from November 8 through December 6, 2005, and after February 21, 2006.

"A claimant is temporarily totally disabled from the time an injury incapacitates him from work until such time as his condition has stabilized or he is as far recovered as the character of his injury will permit." *Ming Auto Body/Ming of Decatur, Inc. v. Industrial Comm'n*, 387 Ill. App. 3d 244, 256, 899 N.E.2d

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365, 378 (2008). "[T]o prove temporary total disability, the employee must demonstrate not only that he did not work, but also that he was unable to work." *Ming*, 387 Ill. App. 3d at 256, 899 N.E.2d at 378. "The time period of TTD is a question of fact for the Commission, and its decision should not be disturbed unless it is against the manifest weight of the evidence." *Ming*, 387 Ill. App. 3d at 256-57, 899 N.E.2d at 378.

Claimant argues the Commission's failure to award TTD benefits from November 8, 2005, when he was fired from employer, through December 6, 2005, "was undoubtedly an oversight or a clerical error." However, on August 31, 2005, Dr. Chang Sun Kim noted claimant was doing better and she recommended he return for a follow up upon having recurrent symptoms. Claimant did not seek medical treatment again until December 7, 2005. In the intervening time, he returned to his regular work duties in October 2005 and was terminated from his employment in November 2005. Given this evidence, the Commission's failure to award TTD from November 8, through December 6, 2005, was not against the manifest weight of the evidence.

Additionally, the Commission determined claimant reached MMI as of February 21, 2006, and his condition of ill-being after that date was not causally connected to his employment. As discussed, its decision was not against the manifest

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weight of the evidence. For the same reasons, the Commission's failure to award claimant TTD benefits after February 21, 2006, was also not against the manifest weight of the evidence.

For the reasons stated, we affirm the circuit court's judgment, confirming the Commission's decision.

Affirmed.