No. 1-10-0597WC

Workers' Compensation
Commission Division
Filed: March 7, 2011

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

HITESH PATEL,	)	APPEAL FROM THE
	)	CIRCUIT COURT OF
Appellant,	)	COOK COUNTY
	)	
v.	)	No. 08 L 50950
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, et al.,	)	
(LASALLE NATIONAL CORPORATION/	)	
ABN AMRO NORTH AMERICA, INC.,	)	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 decision of the Illinois Workers' Compensation Commission awarding the claimant benefits pursuant to the Workers' Compensation Act for an injury his suffered on December 8, 2003, was not against the manifest weight of the evidence.

The claimant, Hitesh Patel, appeals from an order of the Circuit Court of Cook which confirmed a decision of the Illinois Workers' Compensation Commission (the Commission) that fixed the benefits to which he is entitled pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2004)), for injuries he received on December 8, 2003. For the reasons which follow, we affirm the judgment of the circuit court.

The claimant filed an application for adjustment of claim pursuant to the Act, seeking benefits for a back condition allegedly caused by an injury he sustained while in the employ of the respondent, ABN Amro North America, Inc./LaSalle Bank Corporation (ABN). The following factual recitation is taken from the evidence presented at the arbitration hearing for that claim.

The claimant began working as a personal banker for ABN in August 2003. On December 8, 2003, his branch manager asked him to move a Christmas tree, and, that night, the claimant experienced "a lot of back pain." From that point until he ceased trying to return to ABN in May 2006, the claimant was largely medically restricted to sedentary or light-duty work or to no work at all.

On December 11, 2003, Dr. Kalpesh Ghelani reviewed an MRI of the claimant's back and formed the impression that the claimant suffered from "[d]egenerative disc disease, with circumferential bulging and dessication, at the L4-L5 and L5-S1 levels" with

related "mild stenotic changes to the spinal canal."

In January 2004, at the request of ABN, Dr. Julie Wehrner examined the claimant. She concluded that the claimant had a "tear of the annulus fibrosis at L4-L5" and "prominent degenerative bulging with an annular tear at L5-S1." In his January 2004 examination, Dr. Kanu Panchal diagnosed a hearniated disc at L5-S1 and a bulging disc at L4-L5. The claimant thereafter underwent epidural steroid injections and physical therapy, but he reported that his back pain persisted.

On June 16, 2004, the claimant underwent a bilateral lumbar laminectomy and diskectomy to alleviate his lower-back pain and radiating left-leg pain. The claimant testified that his pain continued after the surgery.

In September 2004, at the request of Dr. Maltezos, a medical examiner for ABN, the claimant underwent an MRI scan. After viewing the scan, Dr. Panchal diagnosed "moderate posterior diffuse bulging of the disc at the level of L5-S1" and "focally central disc herniation," and he recommended that the claimant undergo a spinal fusion surgery. Dr. Panchal continued to recommend spinal fusion surgery after viewing a November 2004 CT scan and lumbar myelogram of the claimant.

Dr. Panchal referred the claimant to Dr. Rabinowicz for a second opinion in January 2005, and Dr. Rabinowicz also recommended spinal fusion surgery. In March 2005, a third doctor, Dr. Lami, also recommended the surgery, which the

claimant underwent on March 23, 2005.

The claimant testified that the L5-S1 spinal fusion surgery did not improve, and perhaps even exacerbated, his symptoms, which he said persisted to the time of his testimony.

In April 2005, the claimant underwent a lumbar myelogram, which hospital notes indicated showed "right-sided facet hypertrophy at L5-S1, with associated right neural foraminal narrowing." In May 2005, Dr. Panchal administered two nerve blocks and an epidural injection to the claimant, who at the time was complaining of left-foot pain. Again, the claimant testified that none of the procedures provided him any relief.

Dr. Panchal referred the claimant to a pain specialist, Dr. Beyranvand, who reviewed the claimant's April 2005 myelogram and recommended a spinal cord stimulator. The claimant's insurance company never approved his being given a spinal cord stimulator. Dr. Beyranvand also began prescribing pain medication that later records indicate helped alleviate some of the claimant's symptoms.

In August 2005, the claimant underwent another MRI. In October 2005, Dr. Panchal recommended that the claimant be restricted to sedentary work. In January 2006, Dr. Panchal joined Dr. Beyranvand, as well as Dr. Lami, in recommending that the claimant receive a spinal cord stimulator. By March 2006, Dr. Lami concluded that the claimant's March 2005 surgery had healed, but he noted that the claimant continued to report pain

and walked with a limp. Dr. Lami stated that an MRI revealed a "bulging," but no "frank herniation" of the annulus, as well as a "degenerative change at the L4-5 to adjacent level." Dr. Lami continued to recommend a spinal stimulator.

In April 2006, at ABN's request, the claimant was examined by Dr. Goldberg. Dr. Goldberg concluded that the claimant had "severe left L5 and/or S1 radicular pain despite surgical intervention," and he opined that the claimant was unable to work. He also recommended a spinal cord simulator. However, in a May 2006 report, Dr. Goldberg rescinded these conclusions and instead opined that the claimant had reached maximum medical improvement and could return to his previous work.

In his deposition testimony, Dr. Goldberg explained that he initially recommended a spinal cord stimulator because previous diagnostic tests indicated to him that the claimant would not benefit from further surgery. He recalled that, during his examination, the claimant was "listing *** off to his right side *** to take pressure off of the left side" and appeared to be in appreciable pain; Dr. Goldberg said that he based his conclusions on those subjective complaints. He further explained that it was possible that the soft tissue that had been detected in the claimant's post-fusion diagnostic tests did not cause the left-leg pain the claimant complained of. Dr. Goldberg said that, since his examination, he had changed his opinion based on video surveillance footage of the claimant on five days in March and

April 2006, including the day of Dr. Goldberg's examination. Dr. Goldberg stated that the claimant's actions on the video were inconsistent with his claims during the examination:

> "During the surveillance he was observed sitting at a basketball game. He wasn't listing. He was walking without any difficulty, seen closing the trunk of his car. He entered into the driver's seat without difficulty. I did not see any facial grimacing when he was walking. He was walking without any limp. He was observed lifting the trunk of a car."

After viewing the video surveillance, Dr. Goldberg concluded that the claimant did not require a spinal cord stimulator and in fact could return to work. Dr. Goldberg further concluded that the claimant had reached maximum medical improvement. The video is not included in the record on appeal.

The claimant's benefits stopped on May 12, 2006. At that time, according to the claimant, ABN refused to accommodate his requests for sedentary work, and he began looking for work elsewhere. According to a note regarding Dr. Panchal's August 8, 2006, treatment of the claimant, the claimant continued to report painful symptoms and had a suboptimal ankle reflex. Dr. Panchal recommended that the claimant undergo a functional capacity evaluation, but ABN did not approve the evaluation.

The claimant eventually found a new job in November 2006. In a January 9, 2007, treatment note, Dr. Panchal stated that the

claimant was reporting more back and leg pain but that examination revealed only "minimally restricted" back movement and no leg weakness, but subobtimal left-ankle reflex. In February 2007, while working at his new job, the claimant was sitting in a chair when he felt a sudden pain in his back. From then, he was unable to work or was able to work only restricted hours of light duty from February 27, 2007, to April 12, 2007.

A March 2007 CT exam revealed "[m]oderate posterior bulging" of the L4-L5 intervertebral discs and a "large left posterolateral herniated disc/osteophyte" at the L5-S1 level. An MRI found a "small" osteophyte at the L5-S1 level, degenerative changes at L3-L4, and a herniated disc at L4-L5. After reviewing these tests, Dr. Lami and Dr. Panchal again recommended that the claimant obtain a spinal stimulator.

The claimant testified that, as of the time of the hearing, he continued to have the same back pain symptoms he had immediately following his March 2005 back fusion surgery, but he said that he was no longer taking prescription pain medication.

Following the hearing, the arbitrator awarded the claimant temporary total disability (TTD) benefits for 117 2/7 weeks, 200 weeks of benefits for permanent partial disability (PPD) to 40% of his whole person, and $4,550.48 in medical expenses. In his decision, the arbitrator agreed with the claimant that his treatment from December 8, 2003, to May 11, 2006, was attributable to a work-related injury on the former date.

However, the arbitrator stated that the surveillance video "belie[d] [the claimant's] representations, particularly the representations he made to Dr. Goldberg on April 10, 2006" and that he "did not find [the claimant's] testimony regarding his on-going complaints of pain credible, nor [did] he find [the claimant's] claims of on-going pain to his treating physicians for treatment after May 11, 2006[,] credible." Thus, the arbitrator concluded that the claimant "reached a level of permanency on May 11, 2006," and he awarded the claimant no TTD or medical benefits after that date. The arbitrator also relied on Dr. Goldberg's testimony to conclude that the claimant did not require a spinal cord stimulator, had suffered PPD to the extent of 40% of his person as a whole as a result of his December 2003 injury, and was able to return to work as of May 11, 2006.

The claimant sought review of the arbitrator's decision before the Commission. The Commission, in a unanimous opinion, awarded the claimant a total of $43,645.74 for medical expenses, but otherwise affirmed and adopted the arbitrator's decision, In modifying the claimant's award of medical expenses, the Commission relied on the balances due indicated on the claimant's outstanding medical bills. Those balances due incorporated "adjustments" or "write-offs" that decreased the amount due.

The claimant 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 this

appeal followed.

Although the claimant delineates six distinct arguments on appeal, we distill five of those arguments to the same issue. The claimant's arguments that the Commission erred in (1) failing to award him medical expenses between January 2007 and May 2007; (2) failing to award him maintenance benefits from May 12, 2006, through November 12, 2006; (3) denying him TTD benefits from February 27, 2007, through March 20, 2007 and temporary partial disability payments from March 30, 2007, through April 12, 2007; (4) awarding him only 40% permanent disability benefits for loss of the person as a whole; and (5) denying him access to a spinal cord stimulator; are all premised on the contention that the Commission erred in relying on Dr. Goldberg's assessment of his condition. We therefore address those five of the claimant's arguments by addressing that contention.

It is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E. 2d 221 (1980). 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).

The claimant argues that the Commission's decision to rely on Dr. Goldberg's revised opinion contravenes the manifest weight of the evidence because Dr. Goldberg's revised opinion contradicted that of all other evaluations, including Dr. Goldberg's previous evaluation. However, Dr. Goldberg made quite clear in his testimony that he changed his opinion after viewing a surveillance video that neither we, nor apparently the other doctors who examined the claimant, had an opportunity to view. The Commission could very reasonably have concluded that this video gave Dr. Goldberg sufficient cause to change his opinion of the claimant's condition.

In his briefs, the claimant offers the conclusory assurance that the video does not depict the claimant doing anything that would have exceeded a "sedentary" work restriction. Because the claimant, as the appellant, bears the burden of providing an appellate record sufficient to inform our review, we resolve against him any doubts arising from the incompleteness of the record. *Padgett v. Industrial Comm'n*, 327 Ill. App. 3d 655, 661, 764 N.E.2d 125 (2002), citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392, 459 N.E.2d 958 (1984). Since the record on appeal does not

include a copy of the video, we must reject the claimant's interpretation of the video to the extent it conflicts with the Commission's findings.

Further, even if the claimant were correct that the video does not depict the claimant doing anything inconsistent with a restriction to sedentary work, that observation would do nothing to undercut Dr. Goldberg's assessment. In his deposition testimony, Dr. Goldberg attributed his reevaluation of the claimant's condition not to the level of activity depicted in the surveillance video, but rather the inconsistency between the claimant's videotaped behavior and his behavior during medical examinations. Especially without any opportunity to view the video ourselves, we cannot say that the Commission's decision to credit Dr. Goldberg's interpretation of the video was against the manifest weight of the evidence.

The claimant also argues that Dr. Goldberg's revised opinion is undercut by conflicting objective diagnostic evidence, such as CT scan and MRI results. However, in his testimony, Dr. Goldberg accounted for those diagnostic tests and opined that they did not conclusively establish that the claimant was experiencing continued symptoms from his December 2003 accident. Dr. Goldberg further explained that past diagnoses of the claimant's status relied largely on the claimant's subjective complaints, which, based on the surveillance video, Dr. Goldberg found incredible. This testimony provides sufficient basis for the Commission's

decision to adopt Dr. Goldberg's opinion that the claimant was malingering. That opinion, in turn, gave the Commission sufficient grounds to reach findings that the claimant had reached maximum improvement by May 2006, that he was able to return to work in May 2006 and did not require maintenance, that his disability was limited to 40% of his person as a whole, that any medical expenses after May 2006 were not attributable to the December 2003 accident, and that he did not require a spinal cord stimulator.

The claimant's final argument on appeal is that the Commission erred in calculating his award for medical bills by incorporating "adjustments" and "write offs" that were listed on the bills. According to the claimant, since there was no evidence presented to the Commission to "establish[] the basis for the 'adjustments,' " we should assume that the claimant remains obligated to pay even those portions of the medical bills that have been "adjusted" or "written off." We disagree. As ABN argues in its brief, the determination of the claimant's medical expenses is a question of fact. The fact that the bills themselves indicate balances due that exclude the "adjustments" or "write offs" provides ample evidence to uphold the Commission's finding that the claimant was not, and will not be, required to pay those amounts. If the claimant was not required to pay those bills, then the Commission correctly declined to require ABN to pay them. See *Tower Automotive v. Illinois*

Workers Compensation Comm'n, No. 1-09-3161WC, slip op. at 17-20 (Ill. App. January 31, 2011).

Based upon the foregoing analysis, we conclude that the Commission's decision is not against the manifest weight of he evidence. Therefore, we affirm the judgment of the circuit court which confirmed the Commission's decision.

Affirmed.