

NOTICE

Decision filed 03/21/11. 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.

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. 1-10-0822WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

FORD MOTOR COMPANY,

Appellant,

v.

THE ILLINOIS WORKERS' COMPENSATION
COMMISSION *et al.*
(Carrie Holm, Appellee).

) Appeal from the
) Circuit Court of
) Cook County.

)
) No. 09 L 50681

)
) Honorable
) James Tolmaire III,
) Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.
Presiding Justice McCULLOUGH and Justices HOFFMAN, HUDSON,
and HOLDRIDGE concurred in the judgment.

ORDER

Held: The decisions of the Illinois Workers' Compensation Commission that the claimant sustained work related injuries to her back and neck arising out of and in the course of her employment are not against the manifest weight of the evidence.

The claimant, Carrie Holm, filed an application for adjustment of claim against her employer, Ford Motor Company, seeking workers' compensation

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benefits for injuries to her low back allegedly sustained on April 19, 2002. She also filed an application for adjustment of claim against her employer seeking workers' compensation benefits for injuries to her low back, upper back and neck allegedly sustained on February 17, 2003. The claims were consolidated and proceeded to an arbitration hearing under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2002)).

On August 8, 2008, separate decisions of the arbitrator were filed. The arbitrator found that the claimant sustained accidental injuries that arose out of and in the course of her employment, and that her current condition of ill-being was causally related to these work related injuries. The arbitrator found that the claimant's lower back injury from the April 19, 2002, accident resulted in her being permanently and partially disabled to the extent of 7.5% loss of the person as a whole. The arbitrator ordered the employer to pay her \$534.16 per week for a period of 37.5 weeks for this loss. No temporary total disability (TTD) benefits, or medical bills were awarded on this claim, with the arbitrator noting that those benefits are addressed in the decision on the February 17, 2003, claim.

The arbitrator found that the claimant's back and neck injuries from the February 17, 2003, accident resulted in her being permanently and partially disabled to the extent of 12.5% loss of the person as a whole. The employer was ordered to pay her the sum of \$542.17 per week for a further period of 62.5 weeks as compensation for this loss. The arbitrator found that the claimant was entitled to temporary total disability from September 22, 2003 through January 15, 2008, for a period of 227 1/7 weeks. The arbitrator found that the employer was liable for the costs of medical care associated with the claimant's complaints, as the care

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rendered was reasonable and necessary. The arbitrator ordered the employer to pay Dr. John DeForest's bill in the sum of \$56, and the St. James Hospital bill in the sum of \$1,704.

The employer appealed to the Illinois Workers' Compensation Commission (Commission) which unanimously affirmed and adopted each of the arbitrator's decisions. The employer filed a timely petition for review in the circuit court of Cook County. In a consolidated appeal, the circuit court confirmed the Commission's orders and the employer filed a timely notice of appeal.

BACKGROUND

The claimant began working as an automation tender for the employer in December 1998. She testified that she worked eight to ten hours per day taking blank flat sheets of metal weighing from 28 to 30 pounds and putting them in a press. She worked at a rate of 400 per hour.

In April 2002, the metal sheets were bowed, preventing them from sliding easily and forcing the claimant to use more effort to pick up each piece. The claimant testified that, on Friday, April 19, 2002, after working with the bowed pieces for one week, she had a severe backache. She went to the employer's medical clinic, where she was advised, that for the remainder of the day, she should not push or pull greater than 10 pounds or bend excessively. She returned to work but went home prior to the end of her shift. On Monday, she returned to work.

She continued working until September 19, 2002, at which time her low back pain caused her to seek medical attention at the employer's medical clinic. The report generated that day lists the claimant's statement as "back pain off and

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on x 2 mos." The claimant was diagnosed with "sprain and strain of other and unspecified parts of thorax." She was restricted to minimal bending, stooping, and twisting for one week.

The claimant returned to the clinic on September 26, 2002, complaining of lower back pain. She was referred to St. James Occupational Health Center for evaluation. Dr. Herbert White Jr. examined the claimant and diagnosed her with low back pain/lumbar strain. She was restricted from lifting more than 20 pounds and from work requiring repetitive waist bending, twisting, or stooping. The claimant was examined by Dr. White again on September 30, 2002, and the restrictions were continued. He prescribed physical therapy three times per week. The claimant engaged in physical therapy from October 3, 2002, until April 15, 2003.

On October 9, 2002, the claimant had a magnetic resonance imaging (MRI) of the lumbar spine that revealed a focal central disc protrusion at L5-S1 causing a slight amount of effacement to the thecal sac. Dr. White examined the claimant on October 14, 2002, and found a worsening of the claimant's L5-S1 disc herniation. He referred her to Dr. Payne.

On October 15, 2002, Dr. Payne examined the claimant and noted that, while physical therapy had helped her upper back pain, she now suffered from lower back pain radiating into both her legs. He ordered an epidural at L5-S1 and restricted her from lifting more than 10 to 15 pounds and from twisting or bending.

On October 21, 2002, the claimant had an epidural steroid injection. On November 20, 2002, the claimant had a fluoroscopically guided contrast-enhanced L5-S1 epidural steroid injection.

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On January 2, 2003, the claimant went to Dr. Payne complaining of aching on the right side of her neck. Dr. Payne prescribed a facet block at L4-L5 on the right. He restricted her from lifting greater than 10-15 pounds, twisting, or bending. On January 29, 2003, the claimant had a fluoroscopically guided L4-L5 bilateral facet joint injection.

On February 14, 2003, the claimant visited the employer's medical clinic. The visit summary report reflects that the claimant told the nurse that she was working a restricted job and after one and one-half hours her back and legs began hurting. On February 17, 2003, she returned to the employer's medical clinic requesting "something for back pain." On February 18, 2003, Dr. Payne examined the claimant for pain radiating to her legs and upper spine. He restricted the claimant from any lifting, pushing, pulling, and from repetitive twisting or bending. On February 19, 2003, the claimant had a physical therapy evaluation. In the patient history, the therapist wrote that the claimant stated she re-injured her back on February 14, 2003. On February 21, 2003, the claimant reported to the employer's medical clinic. A nurse noted that she was dragging her right foot slightly.

On February 28, 2003, Dr. Aruna Ganju, a neurosurgeon, examined the claimant for low back pain and paresthesias throughout her arms and legs. She prescribed aquatic therapy and a lumbar epidural steroid injection.

A March 1, 2003, MRI of the claimant's lumbar spine showed a moderate sized central disc protrusion at L5-S1 causing effacement of the anterior aspect of the thecal sac.

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On March 4, 2003, the claimant went to Dr. Payne complaining of increased pain. He prescribed another epidural and restricted her to lifting between shoulder and knee level, to lifting, pushing, or pulling no more than 5 pounds, and no repetitive bending at the waist.

A March 8, 2003, MRI of the claimant's cervical spine showed an indentation on the posterior thecal sac, posterior to the C7 vertebral body. Dr. Gregg Coccaro wrote in his report that it might "represent a hypertrophic spur."

On March 11, 2003, the claimant was examined by Dr. Thomas F. Gleason, at the request of the employer. Dr. Gleason also examined her medical records. He reported that her low back complaints were the result of degenerative disc disease and were "not causally related to her alleged work injury of April 19, 2002." He also opined that her "neck and upper extremity complaints would not be related to specific work injury."

On June 4, 2003, the claimant went to the employer's medical clinic, and Kathleen Hargis, RN, wrote that the "patient stated she will see her personal dr., but the bottom line on her neck pain is due to the hard work she does at ford. patient has worked here 5 years."

On June 9, 2003, the claimant was examined by Dr. Khin, the employer's staff physician. In a visit summary report, he wrote "[t]hough she had injury in low back while getting treatment she c/o neck pain with tingling and numbness to her upper extremities, she never had injury to her neck." Because he felt she never injured her neck at work, he classified the claimant's neck pain as personal.

On September 20, 2003, the claimant went to the employer's clinic complaining that, after working on line 6 the day before, she woke up with muscle

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stiffness in her neck and lower back. She was moved to a different line where she and another employee pulled the "complete body part for a car" from a conveyor belt to a table, flipped it and carried it to a rack. This caused shooting pain in her neck.

On September 22, 2003, Dr. Valerie Prajka, the claimant's family physician, restricted the claimant from repetitive upper body movement, no bending, and no lifting greater than 10 pounds. The claimant brought the work restrictions to her employer. The claimant was placed on "no work available" status. The claimant discussed her status with Dan Stanley from the employer's labor relations department. The claimant testified that he informed her that the restriction was a personal restriction, and, therefore, he did not have to find her work that accommodated her restrictions.

The claimant testified that she was examined by Dr. Prajka on November 13, 2003, and her work restrictions were made permanent. The employer's rules prohibited permanent restrictions and required that the restrictions be renewed every three months. The claimant went on disability and received \$93,323.12 in benefits from September 22, 2003 through January 15, 2008.

Dr. Leonard R. Smith examined the claimant on November 2, 2004. She complained of pain in her right hip, a creaking sensation in her neck, and stiffness and soreness in her neck. The claimant reported increased back pain when she lifted or after being on her feet for a long time. Dr. Smith reviewed her medical records. Dr. Smith concluded that the claimant's complaints probably "represent[ed] some traumatic aggravation of a pre-existing degenerative arthritis involving the cervical spine." He found that there was "clear evidence of a disc

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herniation at L5-S1 with inferior extension causing radiculopathy." He opined that this was "clearly causally connected to the initial onset and recurrence."

The claimant continued under Dr. Prajka's care and provided the employer with periodic work status reports. Dr. Prajka's patient notes dated January 27, 2005, indicate that the claimant experienced a grinding noise when rotating her neck and that her neck pain was worsening. Dr. Prajka found that the claimant could not do heavy repetitive work, but could perform other work.

On February 4, 2005, the claimant had an MRI of her cervical spine. Dr. Daniel Ives found a disc bulge at C6-C7, vertebral body osteophyte formation, and a minimal disc bulge at C5-C6. He noted some flattening of the spinal cord due to the disc bulge and a mild lordosis at the C6-C7 level. He wrote, "[w]ithin the limitations of the previous exam, comparison shows that the disc bulging appears increased at C6-7."

On January 30, 2006, Dr. Smith examined the claimant again "for the purpose of impartial medical evaluation." In his history, he noted that the claimant's neck pain had become progressively worse. He found that her job "would be an adequate cause for the progression of her degenerative disc disease at C6-7. She is disabled from her regular work activities and this is probably permanent."

The claimant testified that, in 2006, Dr. Prajka moved, and she transferred her care to Dr. Evelyn Figueroa. On March 3, 2006, Dr. Figueroa examined the claimant and found that she had C3-C7 degenerative disk disease, a L5-S1 disc herniation since 2002, a C7 bulge, and atrophy of the trapezius.

The claimant testified that between, September 2003 and January 2008, she only worked one week. During that time she presented her work restrictions to the employer every three months. Each time, the employer contended that there was no work available within her restrictions.

The claimant testified that, around August 2007, Dr. Figueroa began lowering her restrictions in an attempt to enable her to return to work. Dr. Figueroa restricted the claimant to a forty hour work week. The claimant provided this restriction to the employer. The claimant testified that, on October 20, 2007, she spoke with Ryan, a representative in the employer's labor relations department. He informed her that she could not return to work with a 40 hour per week work restriction because it would not be fair to the other employees who had been on a mandatory 60 hour work week for the previous two years. She continued on no work available status. On January 11, 2008, Dr. Figueroa released the claimant to work overtime. The claimant returned to work on January 16, 2008.

On August 8, 2008, the arbitrator issued separate decisions finding, as to each claim, that the claimant sustained accidental injuries arising out of and in the course of her employment. The arbitrator based this finding, in each decision, on the "credible testimony of the [claimant], as confirmed by the treating records of the [claimant] ([claimant's] exhibits 2,3,4,5,6,7,9,and 10), as well as the medical reports of Dr. Leonard Smith." The arbitrator found that the claimant's condition of ill-being was causally related to her injuries sustained at work. Again, the arbitrator's causal connection finding on each accident was based upon the claimant's testimony, the medical reports of her treating physicians and the reports

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of her examining physician, Dr. Smith. The arbitrator specifically rejected the conclusions of the employer's examining physician, Dr. Gleason, finding his report "unpersuasive."

The arbitrator found that the claimant's lower back injury from the April 19, 2002, accident resulted in her being permanently and partially disabled to the extent of 7.5% loss of the person as a whole. The arbitrator ordered the employer to pay her \$534.16 per week for a period of 37.5 weeks for this loss. No temporary total disability (TTD) benefits, or medical bills were awarded on this claim, with the arbitrator noting that those benefits are addressed in the decision on the February 17, 2003, claim.

The arbitrator found that the claimant's back and neck injuries from the February 17, 2003, accident resulted in her being permanently and partially disabled to the extent of 12.5% loss of the person as a whole. The employer was ordered to pay her the sum of \$542.17 per week for a further period of 62.5 weeks as compensation for this loss. The arbitrator found that the claimant was entitled to TTD from September 22, 2003 through January 15, 2008, for a period of 227 1/7 weeks. The arbitrator found that the employer was entitled to an 8(J) credit of \$93,323.12. The arbitrator also found that the employer was liable for the costs of medical care associated with the claimant's complaints and ordered the employer to pay Dr. John DeForest's bill in the sum of \$56, and the St. James Hospital bill in the sum of \$1,704.

In separate decisions, the Commission unanimously affirmed and adopted each of the arbitrator's decisions. The employer filed a consolidated appeal of both of the Commission's decisions to the circuit court of Cook County. On February

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24, 2010, the circuit court confirmed the decisions of the Commission. The employer filed a timely notice of appeal.

ANALYSIS

The employer argues that the Commission's finding that the claimant sustained an accidental injury that arose out of and in the course of her employment on February 17, 2003, is against the manifest weight of the evidence.

To obtain compensation under the Act, the claimant must show by a preponderance of the evidence that she has suffered a disabling injury which arose out of and in the course of her employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). Whether a causal connection exists between a claimant's employment and her injury, the extent of the claimant's disability, and the reasonableness and necessity of medical expenses are questions of fact to be resolved by the Commission. *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 867, 923 N.E.2d 870, 878 (2010). "In resolving such issues, it is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence." *R & D Thiel*, 398 Ill. App. 3d at 868, 923 N.E.2d at 878. The Commission's determinations on questions of fact will not be disturbed on review unless they are against the manifest weight of the evidence. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64, 862 N.E.2d 918, 924 (2006). "A reviewing court will not reweigh the evidence, or reject reasonable inferences drawn from it by the Commission, simply because other reasonable inferences could have been drawn." *Durand*, 224 Ill. 2d at 64, 862 N.E.2d at 924. Fact determinations are against the

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manifest weight of the evidence only when no rational trier of fact could have agreed with the Commission. *Durand*, 224 Ill. 2d at 64, 862 N.E.2d at 924.

The employer argues that the claimant presented no evidence with any objective findings that she suffered any injury to her cervical spine, and, therefore, she should be denied any compensation for such an injury. Specifically, the employer argues that the opinions of Dr. Smith were unsupported by the claimant's testimony and the medical records and were against the manifest weight of the evidence. The employer further argues that the claimant's period of disability from September 23, 2003, through January 15, 2008, is not related to any specific work injury in light of the medical evidence of Dr. Aruna Ganju and Dr. Thomas Gleason.

The evidence reveals that starting in early 2003, the claimant suffered from neck pain. She testified and the medical records show that on January 2, 2003, she went to Dr. Payne complaining of an ache in her neck. The claimant testified that she had complained about neck discomfort to Dr. White, her physical therapist, and Dr. Payne; however, they did not treat her for that pain.

While the application for adjustment of claim lists the claimant's injury date as February 17, 2003, she testified that her repetitive work activities caused a back and neck injury to manifest itself on February 14, 2003. She repeatedly sought treatment for this pain between mid-February and early March 2003. On February 14 and 17, 2003, the claimant visited the employer's medical clinic complaining of back related pain. On February 18, 2003, the claimant went to Dr. Payne complaining of pain radiating to her legs and upper spine. On February 19, 2003, she told her physical therapist that she was injured on February 14, 2003. A

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physical therapy progress note dated February 26, 2003, shows that the claimant complained of scapular soreness. On February 28, 2003, the claimant was examined by Dr. Ganju. Because of the claimant's upper extremity symptoms, Dr. Ganju ordered an MRI of her cervical spine. The claimant testified that on March 3, 2003, she went to Dr. Payne complaining of pain between her shoulders. On March 8, 2003, the claimant had an MRI of her cervical spine which revealed "an indentation on the posterior thecal sac, posterior to the C7 vertebral body."

The claimant continued to seek treatment for her neck pain. She visited the employer's medical clinic on June 4, 2003, and a nurse wrote in the patient notes that "the bottom line on her neck pain is due to the hard work she does at ford." The claimant testified that she was admitted to Advocate South Suburban Hospital on June 13, 2003, for lower back and neck pain. On September 20, 2003, the claimant went to the employer's medical clinic complaining that after working on line 6, she woke up with stiffness in her neck and back. She was moved to another job which caused her shooting pain in her neck.

Dr. Smith examined the claimant on November 2, 2004. She complained about a creaking sensation in her neck, and stiffness and soreness in her neck. He concluded that her complaints probably "represent[ed] some traumatic aggravation of a pre-existing degenerative arthritis involving the cervical spine." Dr. Smith examined the claimant again on January 30, 2006 and found that her job "would be an adequate cause for the progression of her degenerative disc disease at C6-C7."

At the request of the employer, Dr. Thomas Gleason examined the claimant. In a letter dated March 11, 2003, Dr. Gleason wrote that in February 2003, the claimant developed increasing low back pain and neck pain. He listed her

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complaints as including "intermittent neck pain with radiation down the arms to the elbows" and "[i]ncreased neck pain with extension of neck." Dr. Gleason diagnosed the claimant with cervical and lumbar radicular syndrome. After examining the claimant and reviewing her medical records, it was his opinion that her degenerative disc disease with central extruded herniation at L5-S, and her neck and upper extremity complaints were not related to a specific work injury.

The claimant testified that she did not injure her neck or lower back in any other manner than her work injuries. The claimant stated that she continues to suffer from neck pain and that the pain limits her daily activities.

The arbitrator found that the claimant sustained accidental injuries arising out of and in the course of her employment. He based this on the claimant's testimony, the medical records, and Dr. Smith's opinion. The Commission found the claimant credible and resolved the conflicting medical evidence in favor of Dr. Smith. There is sufficient evidence in the record to support the Commission's determination.

CONCLUSION

We affirm the decision of the circuit court of Cook County confirming the decisions of the Commission.

Affirmed.