

2012 IL App (2nd) 110715WC-U  
No. 2-11-0715WC  
Order filed June 25, 2012

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).

IN THE APPELLATE COURT

OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

WILFREDO REYES,	)	Appeal from
Appellant and Cross-Appellee	)	Circuit Court of
v.	)	Kane County
THE WORKERS' COMPENSATION	)	No. 10MR606
COMMISSION <i>et al.</i> (Millard Refrigerated	)	
Services, Appellees and Cross-Appellants).	)	Honorable
	)	Thomas E. Mueller,
	)	Judge Presiding.

---

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

**ORDER**

- ¶ 1 *Held:* The Commission's award of prospective medical expenses was not against the manifest weight of the evidence and the circuit court erred by reversing that portion of the Commission's decision. Also, the Commission's awards of temporary total disability benefits and medical expenses for claimant's cervical condition of ill-being were supported by sufficient evidence and not against the manifest weight of the evidence.
- ¶ 2 On May 7, 2009, claimant, Wilfredo Reyes, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)), seeking benefits from employer, Millard Refrigerated Services. Following a hearing, the arbitrator determined claimant sustained accidental injuries that arose out of and in the course of

his employment on March 28, 2009, and awarded him (1) 43-2/7 weeks' temporary total disability (TTD) benefits and (2) reasonable and necessary medical expenses of \$45,256.37. The arbitrator also ordered employer to pay the reasonable costs associated with the cervical surgery prescribed by one of claimant's doctors.

¶ 3 On review, the Workers' Compensation Commission (Commission) modified portions of the arbitrator's decision by correcting specific factual findings and reducing her award of medical expenses. The Commission's modified medical award totaled \$42,953.41, with one commissioner dissenting as to the award of expenses relating to the epidural and trigger point injections claimant received. The Commission otherwise affirmed and adopted the arbitrator's decision. It also remanded the case to the arbitrator for a determination of a further amount of compensation for temporary or permanent disability. See *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980). On judicial review, the circuit court of Kane County reversed the Commission's prospective medical award as being against the manifest weight of the evidence but otherwise confirmed the Commission's decision.

¶ 4 Claimant appeals, arguing the Commission's award of prospective medical expenses for cervical spine surgery was not against the manifest weight of the evidence and the circuit court erred by reversing that award. Employer cross-appeals, arguing (1) claimant failed to properly allege a cervical injury and (2) the Commission's awards of medical expenses and TTD benefits were against the manifest weight of the evidence. We affirm in part and reverse in part the circuit court's decision, and reinstate the Commission's original prospective medical award.

¶ 5 The parties are familiar with the evidence presented and we discuss it only to the extent necessary to put their arguments in context. On appeal, claimant argues the circuit court erred by reversing the Commission's prospective medical award. He contends the Commission's award of expenses for the cervical spine surgery recommended by Dr. Martin Herman was appropriate and not against the manifest weight of the evidence. Claimant argues the Commission's finding of a causal connection between his work accident and his cervical condition of ill-being and its finding that he was in need of the cervical surgery were supported by sufficient evidence.

¶ 6 Whether a causal connection exists between a claimant's work accident and his condition of ill-being "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). It is the Commission's function 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. Where the record contains sufficient factual evidence to support the Commission's decision, it will not be set aside on appeal. *City of Springfield*, 388 Ill. App. 3d at 315, 901 N.E.2d at 1081.

¶ 7 Additionally, "[m]edical testimony is not essential to support the conclusion that an accident caused a claimant's condition of ill-being." *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 912, 851 N.E.2d 72, 78 (2006). "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the

accident and the employee's injury." *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63-64, 442 N.E.2d 908, 911 (1982).

¶ 8 Here, the Commission found a causal connection between claimant's work accident and his cervical condition of ill-being. To support its causation finding, it relied, in part, on the chain of events following claimant's work accident. Evidence in the record supports that finding, showing claimant began experiencing neck and upper back pain on March 28, 2009, after spending an entire day at work lifting boxes. Claimant testified he began having neck pain at work on that date. The following morning, he was unable to move his neck due to intense pain. The record fails to show claimant was symptomatic prior March 28, 2009. Instead, it reveals consistent reports to his medical providers that he experienced neck pain after working on March 28, as well as constant complaints to each of his providers about continuing neck and upper back pain after that date.

¶ 9 To support its causation finding, the Commission also relied upon Dr. Herman's medical records, concluding that although Dr. Herman's records did not "contain a specific causation opinion," it was "reasonable to infer that Dr. Herman found causation" based on Dr. Herman's recorded history, findings, and recommendations. The Commission is entitled to draw reasonable inferences from the evidence presented and committed no error.

¶ 10 Evidence showed, on August 14, 2009, Dr. Herman authored a letter addressed to Dr. Barry Ring, another of claimant's medical providers. In that letter, Dr. Herman noted as follows:

"[Claimant] works as a forklift driver at [employer]. He was injured at work lifting boxes. He was carrying two at a time and

they weighed 30 pounds a piece. Picking up boxes is not a part of his routine but he was required by his supervisor to do it on this particular day, which was March 28, 2009. He began to develop pain in his neck radiating towards his rhomboid region and even up towards the back of his head."

Dr. Herman went on to describe claimant's medial treatment and noted that claimant "had continued pain into his neck, shoulder[,] and back of his shoulder." He found claimant's cervical magnetic resonance imaging (MRI) scan demonstrated "that he ha[d] an L3-4 disc herniation towards the left with some bony spurs." Dr. Herman's impression was that claimant had "a left C3-4 disc herniation with osteophytes, foraminal stenosis and nerve root compression." He noted conservative treatment for claimant had failed and recommended a cervical discectomy and fusion at C3-4.

¶ 11 Although neither Dr. Herman nor claimant's other medical providers gave an express opinion regarding causation, the evidence presented was sufficient for the Commission to conclude that claimant's cervical condition of ill-being was causally connected to his March 2009, work accident. The Commission drew reasonable inferences from the record and its causation decision was not against the manifest weight of the evidence.

¶ 12 The Commission also found the cervical surgery recommended by Dr. Herman to be reasonable and necessary. Under the Act, a claimant is entitled to benefits "for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred" so long as they are "reasonably required to cure or relieve from the effects of the accidental injury." 820 ILCS 305/8(a) (West 2008). "Prescribed services not yet

performed or paid for are considered to have been 'incurred' within the meaning of the statute." *City of Springfield*, 388 Ill. App. 3d at 317, 901 N.E.2d at 1082. "Whether a medical expense is either reasonable or necessary is a question of fact to be resolved by the Commission, and its determination will not be overturned on review unless it is against the manifest weight of the evidence." *Absolute Cleaning/SVML v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 470, 949 N.E.2d 1158, 1165 (2011).

¶ 13 Here, Dr. Herman recommended claimant undergo "an anterior cervical discectomy and fusion at C3-4." He noted claimant underwent conservative treatment that was unsuccessful and he felt surgical intervention was appropriate. The Commission affirmed and adopted the arbitrator's decision, finding claimant was entitled to undergo the surgery recommended by Dr. Herman. The arbitrator based her finding on the failure of conservative measures, the cervical MRI, Dr. Herman's opinions, and the utilization review report that employer submitted which certified the surgery as medically necessary.

¶ 14 The decisions of both the arbitrator and the Commission were supported by sufficient factual evidence. The Commission's award of prospective medical expenses was not against the manifest weight of the evidence. The circuit court reversed the Commission's prospective medical award, stating only that it was against the manifest weight of the evidence. We disagree and find the court erred in reversing that portion of the Commission's decision. The Commission's award is reinstated.

¶ 15 On cross-appeal, employer argues claimant was not entitled to benefits under the Act for his cervical condition of ill-being because, in his application for adjustment of claim, he alleged only a lifting injury to his "low back" and never amended his application to claim a

cervical injury. As claimant points out, employer has forfeited this claim by failing to support his contention with citations to legal authority. See Ill. S. Ct. R. 341(h)(7) (eff. July 1, 2008); *Ameritech Services, Inc. v. Illinois Workers' Compensation Comm'n*, 389 Ill. App. 3d 191, 208, 904 N.E.2d 1122, 1137 (2009) (Arguments on appeal are forfeited when a party fails to support them with citation to authority). Moreover, employer's claim is without merit as the record shows it fully participated in the arbitration hearing, made no objection to the presentation of evidence related to claimant's neck injury, and was prepared to address and refute claimant's claim for benefits as it related to his cervical injury.

¶ 16 Also on cross-appeal, employer also argues the Commission's awards of medical expenses and TTD benefits were not supported by the evidence. We first address employer's challenge to the Commission's award of medical expenses. Specifically, employer argues the Commission erred by finding claimant entitled to (1) reimbursement for chiropractic expenses beyond 12 chiropractic sessions and (2) expenses related to every epidural and trigger point injection claimant received.

¶ 17 As stated, the Act entitles a claimant to receive benefits "for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred" so long as they are "reasonably required to cure or relieve from the effects of the accidental injury." 820 ILCS 305/8(a) (West 2008). Again, the award of medical expenses is a question of fact for the Commission and its decision will not be set aside unless it is against the manifest weight of the evidence. *Absolute Cleaning*, 409 Ill. App. 3d at 470, 949 N.E.2d at 1165. "For a finding of fact to be contrary to the manifest weight of the evidence, an opposite

conclusion must be clearly apparent." *Otto Baum Co., Inc. v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100959WC, ¶ 13, 960 N.E.2d 583, 586 (2011).

¶ 18 Here, the record shows claimant received chiropractic care from April 6 to August 5, 2009, totaling expenses in the amount of \$9,058.30. Employer argues claimant is entitled to receive expenses for only the first 12 chiropractic treatment sessions. It relies on the May 2009 recommendations of Dr. Sean Salehi, who evaluated claimant at employer's request, that claimant complete 12 sessions of chiropractic or physical therapy and the utilization review which certified only claimant's chiropractic treatment from April 8 to 29, 2009, (totaling 12 visits) as medically necessary. The arbitrator found claimant entitled to reimbursement for the full amount of claimed chiropractic expenses (\$9,058.30). However, the Commission reduced that award to \$6,755.34, finding claimant entitled to reimbursement for only three months of chiropractic care. It based its decision on Dr. Salehi's opinion in October 2009, that "physical therapy for up to three months post-injury" was "medically appropriate."

¶ 19 While both employer and the Commission relied upon Dr. Salehi's opinions, the Commission based its decision upon Dr. Salehi's most recent opinion and evaluation. Employer points to the utilization review which certified only 12 chiropractic sessions as medically necessary; however, a utilization review is not definitive and, instead, must be considered "along with all other evidence and in the same manner as all other evidence, in the determination of the reasonableness and necessity of the medical bills or treatment." 820 ILCS 305/8.7(i) (West 2008).

¶ 20 The Commission's award of medical expenses for three months of chiropractic treatment was supported by Dr. Salehi's opinions. Although other evidence was conflicting, it



was within the province of the Commission to resolve those conflicts. We find no error in the Commission's award of chiropractic expenses.

¶ 21 Employer also challenges the Commission's award of expenses for most of the epidural and trigger point injections claimant received. The record shows, on May 15, June 5, July 10, and August 7, 2009, claimant received injections from Dr. Ring. Claimant testified he felt relief from his pain when he received the injections but they failed to provide him with any lasting relief from his symptoms. Employer argues claimant is only entitled to expenses related to his initial lumbar and cervical epidural injections. It points to claimant's testimony that the injections provided no lasting relief; the utilization review which certified only claimant's May 15, 2009, epidural steroid injection and his June 5, 2009, cervical epidural steroid injection as medically necessary; and the failure of claimant's medical record to document any objective or subjective improvement following the initial injections.

¶ 22 In its decision, the Commission specifically affirmed the arbitrator's award of "expenses relating to the epidural and trigger point injections [claimant] underwent during the spring and summer of 2009." The Commission noted Dr. Salehi "made no adverse comments concerning the injections" even though he "specifically commented on the propriety of [claimant's] chiropractic care." Further, the Commission found "it was reasonable for [claimant] and his physicians to explore conservative measures, such as injections, before giving consideration to surgery." The Commission appropriately weighed the conflicting evidence and an opposite conclusion is not clearly apparent. Its award of expenses related to claimant's injections is not against the manifest weight of the evidence.

¶ 23 Finally, we address employer's challenge to the Commission's TTD award. "An employee is temporarily totally disabled from the time that an injury incapacitates her from work until such time as she is as far recovered or restored as the permanent character of her injury will permit." *Absolute Cleaning*, 409 Ill. App. 3d at 471, 949 N.E.2d at 1166. An injured employee's eligibility for TTD benefits ends once his physical condition stabilizes or he reaches maximum medical improvement. *Absolute Cleaning*, 409 Ill. App. 3d at 471, 949 N.E.2d at 1166. "The determination of the period of time during which a claimant is temporarily and totally disabled is a question of fact to be resolved by the Commission, and its resolution of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence." *Absolute Cleaning*, 409 Ill. App. 3d at 471, 949 N.E.2d at 1166.

¶ 24 Here, the Commission affirmed the arbitrator's award of 43-2/7 weeks' TTD benefits for intermittent periods from April 21, 2009, through the date of trial on April 8, 2010. The arbitrator based her award on claimant's testimony regarding the dates he worked following his March 28, 2009, accident. Employer argues the evidence presented fails to support the Commission's award and it should be reversed or modified. It contends claimant testified regarding the days he returned to work but did not offer any evidence of pain complaints on those specific days. Employer also points to an off-work slip Dr. Ring gave claimant, stating he could return to work on July 20, 2009. Finally, it notes Dr. Salehi's opinion on October 27, 2009, that claimant could return to full-duty work.

¶ 25 In awarding TTD benefits through the date of the arbitration hearing, the Commission determined claimant had not reached maximum medical improvement and his condition had not stabilized. Evidence in the record supports the Commission's decision.

Evidence showed claimant began experiencing neck and upper back pain after his work accident on March 28, 2009. Thereafter he consistently reported pain to his medical providers. In April and May 2009, both Dr. George Pappas and Dr. Salehi recommended claimant perform only light or modified-duty work. Dr. Ring also provided claimant with off-work slips, the last one stating he could return to work on July 20, 2009. However, on that date, claimant saw Dr. Hamid Kahn who diagnosed claimant with cervical and low back strains and recommended light-duty work with no lifting over 10 pounds. Evidence further showed claimant experienced no relief from his symptoms with conservative care and, ultimately, Dr. Herman recommended surgical intervention which claimant had not yet undergone at the time of arbitration.

¶ 26            Again, although the record contains conflicting medical evidence, namely Dr. Salehi's October 2009 opinion that claimant could return to full-duty work, it was within the province of the Commission to weigh the evidence. The record shows support for the Commission's decision regarding TTD benefits and its TTD award was not against the manifest weight of the evidence.

¶ 27            For the reasons stated, we reverse the circuit court's reversal of the Commission's prospective medical award and reinstate that award. We otherwise affirm the court's decision to confirm the remainder of the Commission's decision.

¶ 28            Affirmed in part and reversed in part; award reinstated.