2012 IL App (3d) 110145WC-U

Order filed February 16, 2012

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

ROMEOVILLE POLICE DEPARTMENT,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
Appellant,	)	Will County, Illinois
	)	
	)	Appeal No. 3-11-0145WC
v.	)	Circuit No. 10-MR-840
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION *et al*. (Donna Kemper,	)	Barbara Petrungaro,
Appellee).	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.

Presiding Justice McCullough and Justices Hoffman, Hudson, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: The Commission's determination that the claimant's injuries arose out of and in the course of her employment and the award of prospective medical benefits were not against the manifest weight of the evidence.

¶ 2 The claimant, Donna Kemper, filed an application for adjustment of claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2002)) seeking benefits for neck and back injuries she claimed to have sustained on May 22, 2002, while working as a police

officer employed by the Romeoville Police Department (employer). Following a hearing, an arbitrator found that the claimant had failed to establish that her current condition of ill-being was causally related to her employment and denied benefits. The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission). The Commission reversed the arbitrator and determined that the claimant's current condition of ill-being was causally related to her employment on May 22, 2002. Specifically, the Commission determined that an intervening accident occurring on October 7, 2002, did not break the chain of causation between the claimant's current condition of ill-being and the May 22, 2002, accident. The Commission also awarded prospective medical treatment. The employer sought judicial review of the Commission's decision in the circuit court of Will County, which confirmed the Commission's decision. This appeal followed.

¶ 3 FACTS

¶ 4 The claimant was employed as police officer. On May 22, 2002, while on assigned patrol duties, the claimant responded to a dispatch call. While en route to the dispatch location, the claimant's squad car stuck a citizen's car which had pulled in front of the squad car. The claimant was transported from the scene to Provena St. Joseph Medical Center in Joliet, Illinois. Emergency department records indicated that the claimant complained of neck stiffness and back pain. Diagnostic tests were negative and the claimant was released with a diagnosis of cervical strain, lumbar spine strain, and thoracic spine strain.

¶ 5 On May 29, 2002, the claimant sought treatment from her family physician, Dr. Christine Shih, who diagnosed "mainly right sided para cervical and para upper thoracic and lower lumbar spasm and strain." Dr. Shih prescribed physical therapy.

¶ 6 On June 6, 2002, Dr. Shih noted upper and mid back strain with no indications of radiculopathy. The claimant continued with physical therapy, and, on June 27, 2002, Dr. Shih reported that the claimant was doing well. On July 1, 2002, Dr. Shih released the claimant to return to full duty.

¶ 7 On August 1, 2002, the claimant sought treatment for continuing neck and back pain from Dr. Steven Mather. Dr. Mather recommended a more aggressive rehabilitation program. Dr. Mather examined the claimant on August 29, 2002, at which time he diagnosed thoracic strain syndrome. Dr. Mather made a notation indicating that the claimant's lower back pain had "diminished a great deal and is basically just some stiffness in the morning." The report also noted a lack of radiating pain.

¶ 8 On October 7, 2002, the claimant reported a minor injury to her lower back while making an arrest. The claimant did not seek medical attention following the incident.

¶ 9 On October 15, 2002, the claimant sought treatment from Dr. Shih. Dr. Shih's office notes recorded: "[Claimant] states, last Monday, which was the 7th of October, [she] was restraining a person and states, she thinks, she re-injured or aggravated her back.." Dr. Shih also reported: "[Claimant] says, since then she started having some tingling or shooting pains down her leg. She says, when she sits, it is down her right leg and when she stands, it is down her left leg and it just feels very tight." Following the examination, Dr. Shih ordered the claimant off work.

¶ 10 On October 31, 2002, the claimant was examined by Dr. Mather. The claimant did not inform Dr. Mather of the October 7, 2002, incident. She complained that the weight of her service belt was causing back pain. Dr. Mather ordered an MRI.

¶ 11 On November 8, 2002, Dr. Mather interpreted the MRI results as showing disc herniations at L4-L5 and L5-S1. Dr. Mather's notes indicated that surgery was discussed, but the claimant indicated a desire to avoid surgery at that time. Dr. Mather released the claimant to full duty.

¶ 12 On December 2, 2002, the claimant was examined by Dr. Robert Beatty, who recommended lumbar fusion surgery. The claimant declined lumbar fusion surgery. As an alternative to lumbar fusion, Dr. Beatty suggested disc removal surgery instead.

¶ 13 On April 21, 2003, Dr. Beatty performed a bilateral lumbar laminectomy and disc removal at L4-L5 and L5-S1. Following a round of physical therapy, Dr. Beatty released the claimant to return to full work duties without restrictions on July 21, 2003. Dr. Beatty's treatment notes on that date indicated the claimant reported feeling "perfect." A report written by Dr. Shih on August 29, 2003, indicated that "[claimant] states that her back is doing excellent, in fact it is more flexible now than what it was before her injury."

¶ 14 Approximately two years later, on September 8, 2005, the claimant sought treatment from Dr. Beatty and reported back pain when wearing heavy equipment or vacuuming. Dr. Beatty ordered an MRI of the lumbar spine which Dr. Beatty interpreted to indicate degenerative changes at L4 and disc bulging and protrusion at L5-S1. Dr. Beatty opined that the claimant's current symptoms were "a progression of the original herniated disc that we took care of in 2003." On September 21, 2005, Dr. Beatty recommended lumbar fusion surgery. As of the date of the hearing, the surgery had yet to be authorized by the employer.

¶ 15 On December 2, 2008, the claimant was examined at the request of the employer by Dr. David Spencer. Dr. Spencer also reviewed the September 2005 MRI report. Dr. Spencer opined

that the claimant would not benefit from spinal fusion surgery. A new MRI was conducted on February 13, 2009, and a copy of the report was provided to Dr. Spencer. Based upon the new report, Dr. Spencer agreed that the claimant should have "laminectomy/diskectomy and fusion operation at L4-5 for that new L4-5 disc herniation." As to the question of causal connection, Dr. Spencer stated:

> "The relationship to the disc herniation which was identified on February 13, 2009, to an accident in '02 is somewhat problematic. We know the underlying cause for her current disc herniation is the degenerative condition of the lumbar spine which is the result of progressive deterioration of the disc as a result of underlying factors intrinsic to the disc as well as the repetitive stress of everyday life. Her body habitus is of course another potential source for the development of this large disc herniation which was identified on February 13, 2009. In general, the longer the time interval between a traumatic incident and the identification of a lumbar disc herniation, the less relevant that traumatic episode is to the causation of that disc herniation."

¶ 16 Dr. Beatty testified via evidence deposition. He opined that the condition of ill-being leading to the disc fusion surgery was causally related to the May 22, 2002, accident. He testified that the February 13, 2009, MRI revealed a large new central disc herniation at L4-L5 with an almost complete closure of the spinal canal which, in his opinion, was the result of the natural degradation process brought on by the original laminectomy. Dr. Beatty further opined that,

although the herniation at L4-L5 revealed in the February 2009 MRI was new, the original laminectomy, necessitated by the May 22, 2002, accident, had weakened the spinal structure to such an extent that the new herniation eventually occurred as a result.

¶ 17 The arbitrator did not accept Dr. Beatty's opinion, finding that the claimant had failed to prove an accident that arose out of and in the course of her employment. The arbitrator relied primarily upon the fact that the claimant had been mostly pain free prior to the October 7, 2002, incident regarding the arrest and also the fact that the claimant's symptoms greatly intensified only after that incident.

¶ 18 The claimant appealed the arbitrator's decision to the Commission. The Commission rejected the arbitrator's finding and concluded that the claimant's current condition of ill-being was causally related to her May 22, 2002, accident. The Commission gave greater weight to Dr. Beatty's opinion that the claimant had a need for fusion surgery immediately after the May 22, 2002, accident and his opinion that the claimant's current condition of ill-being was the result of degeneration brought on by the weakening of the spine caused by the laminectory following the May 22, 2002, accident. The Commission, based upon the testimony of the claimant, found that the incident on October 7, 2002, appeared to be "very minor" and further found that the October 7, 2002, incident was insufficient to break the causal chain between the May 22, 2002, accident and the claimant's current condition of ill-being. The Commission cited *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780 (2005), wherein the appellate court held that when a claimant's condition is weakened by a work-related accident, a subsequent accident that aggravates that condition does not break the causal chain. The Commission further ordered that the employer pay for the prospective medical and surgical treatment recommended by Dr. Beatty.

¶ 19 The employer then sought judicial review of the Commission's decision in the circuit court of Will County. Following briefing and oral argument, the circuit court ruled that the Commission's findings were not against the manifest weight of the evidence and confirmed the Commission's decision. This appeal followed.

¶ 20 ANALYSIS

¶ 21 On appeal, the employer first argues that the Commission erred in finding that the claimant's current condition of ill-being was causally related to the May 22, 2002, accident. The employer maintains that the claimant had completely recovered from any injuries sustained on May 22, 2002, and that her current condition of ill-being was caused solely by the incident on October 7, 2002. The employer further maintains that the October 7, 2002, incident was an independent causal event which broke the chain of connection between the May 22, 2002, accident and the claimant's subsequent condition of ill-being.

¶ 22 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. *Navistar International Transportation Corp. v. Industrial Comm'n*, 331 Ill. App. 3d 405, 415 (2002). It is the Commission's duty to resolve conflicts in the evidence, including medical opinion evidence. *Id.* For the Commission's decision to be against the manifest weight of the evidence, the record must disclose that an opposite conclusion clearly was the proper result. *Gallianetti v. Industrial Comm'n*, 315 Ill. App. 3d 721, 729 (2000).

¶ 23 Here, the employer maintains that the opposite conclusion was clearly proper since the claimant was completely recovered from the effects of the May 22, 2002, accident and all of her symptoms for which the fusion surgery was required were not reported until after the October 7,

2002, incident. Thus, the October 7, 2002, incident must have been the sole cause of the claimant's subsequent condition of ill-being. While the employer's interpretation of the record is certainly plausible, it is nonetheless at odds with the Commission's interpretation of the record.

¶ 24 First, the record does not conclusively establish that the claimant had completely recovered from the effects of the May 22, 2002, accident prior to the October 7, 2002, incident. While Dr. Shih reported that the claimant was "doing well" and released her to full duty on July 1, 2002, the record also indicates that, as late as August 29, 2002, the claimant was reporting pain, albeit diminishing pain, to Dr. Mather. Second, the Commission determined that the incident on October 7, 2002, was "very minor" in nature and, thus, was unlikely to be the sole cause of the claimant's condition of ill-being after that date. There is nothing in the record to indicate that the Commission's conclusion regarding the nature of the incident on October 7, 2002, was against the manifest weight of the evidence. Additionally, the fact that the incident on October 7, 2002, was "very minor" in nature satisfied the Commission as to why the claimant had failed to mention the incident to Drs. Mather and Beatty.

¶ 25 Moreover, the medical opinion testimony of Dr. Beatty, the claimant's treating surgeon, supported the Commission's finding regarding causation. Dr. Beatty testified in his deposition that he had considered the disc fusion surgery a viable option in December 2002. He also opined that the claimant's current condition was caused, at least in part, by the weakening of her spine following the May 22, 2002, accident. It was Dr. Beatty's opinion that the claimant's current condition of ill-being was the result of a degenerative process that was accelerated by the laminectomy made necessary by the May 22, 2002, accident. Moreover, Dr. Spencer's opinion, offered by the employer, did not directly conflict with Dr. Beatty's opinion, as Dr. Spencer

merely observed that the passage of time between May 22, 2002, and his February 2009 MRI was "problematic" and "in general" the passage of time made the May 22, 2002, accident "less relevant."

¶ 26 As the Commission noted, *Vogel* stands for the proposition that where surgery is necessitated by an industrial accident, conditions that could not have developed but for the surgery do not break the chain of causation between the claimant's subsequent condition of ill-being and the original accident. *Vogel*, 354 Ill. App. 3d at 788. Here, Dr. Beatty's testimony established that the new herniation was, at least partially, caused by the damage done to the claimant's spine by the surgery performed as a result of the May 22, 2002, accident. Given the record before the Commission, it cannot be said that its finding that the claimant's current condition of ill-being was causally related to the May 22, 2002, accident was against the manifest weight of the evidence.

¶ 27 The employer's second argument is that the Commission erred in awarding prospective medical treatment. The Commission's award of prospective medical benefits will not be overturned on appeal unless the award is against the manifest weight of the evidence. *Homebrite Ace Hardware v. Industrial Comm'n*, 351 Ill. App. 3d 333, 342 (2004). Here, the employer's only argument is that the medical expenses related to the prospective disc fusion surgery are not justified based upon the premise that the Commission's causation finding is erroneous. However, since the Commission's causation determination is correct, the employer's contention that the Commission's award of prospective medical benefits was in error must be rejected. *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 436 (2011).

¶ 28 CONCLUSION

¶ 29 The judgment of the Will County circuit court, which confirmed the Commission's decision is affirmed. The matter is remanded to the Commission for further proceedings.

¶ 30 Affirmed and remanded.