2012 IL App (4th) 110074WC-U

NO. 4-11-0074WC

Workers' Compensation
Commission Division
Filed: April 17, 2012

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

MARILYN GUYMON,	)	APPEAL FROM THE
	)	CIRCUIT COURT OF
Appellant and Cross-Appellee,	)	COLES COUNTY
	)	
v.	)	Nos. 10 MR 99 and
	)	10 MR 103
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, et al.,	)	
(PINNACLE FOODS CORP.,	)	HONORABLE
	)	MITCHELL K. SHICK,
Appellee and Cross-Appellant).	)	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:
1. The Commission's finding that the claimant's recommended back surgery is not causally related to her employment injury is not against the manifest weight of the evidence.
2. The Commission's award of temporary total disability benefits is not against the manifest weight of the evidence.

¶ 1 The claimant, Marilyn Guymon, appeals from that portion of the judgment of the Circuit

Court of Coles County that confirmed the Illinois Workers' Compensation Commission's (Commission) determination that her recommended back surgery is not causally related to her employment injury. Pinnacle Foods Corp. (Pinnacle) has cross-appealed from that portion of the judgment of the Circuit Court of Coles County that confirmed the Commission's award of temporary total disability (TTD) benefits to the claimant pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 et seq. (West 2006)). For the reasons which follow, we affirm the judgment of the circuit court.

¶ 2 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on August 27, 2008.

¶ 3 The claimant began working for Pinnacle in August 2005. During her testimony before the arbitrator, she recalled preparing to empty a trash can while at work on January 14, 2006. Her next memory was "finding [herself] flat on [her] back on the floor," and she said her memory was intermittent in the days that followed.

¶ 4 Medical records of the claimant's hospitalization indicate that she lost consciousness after a fall at work and was diagnosed with a spinal cord injury. A January 17, 2006, MRI of the claimant's back, taken during her hospitalization, revealed multilevel degenerative disease as well as possible edema associated with a spinal cord contusion. A CT taken that same day revealed evidence of a traumatic edema and left lower neck soft tissue injury.

¶ 5 After her hospitalization, the claimant underwent a course of physical therapy. February and March 2006 physical therapy notes indicate that the claimant reported having experienced some dizziness during daily activities.

¶ 6 After a May 24, 2007, examination, Dr. Charles Wright reviewed a May 22 MRI of the claimant's back and wrote in his treatment notes that she had a slight signal change in her spinal cord but that the change was "less prominent" than it had been in February 2006. Dr. Wright also wrote that the MRI showed the claimant's spinal stenosis. On May 24, the Carle Clinic issued a

note indicating that the claimant could not return to work.

¶ 7 In a September 10, 2007, treatment note, Dr. Julian Vassay indicated that the claimant reported a tingling in her forearms and that this tingling was a new problem. The claimant also reported fatigue if she attempted to walk for prolonged periods. In an October 29, 2007, treatment note, Dr. Vassay wrote that the claimant complained of paresthesias and cramping in her arms; the note said that the claimant reported that those problems had been present since her January 2006 fall. Dr. Vassay noted similar complaints in a December 6, 2007, treatment note.

¶ 8 In a May 12, 2008, treatment note, Dr. William Olivero wrote that the claimant complained of pressure in her neck area and chronic arm troubles, including diminished reflexes. Dr. Olivero, who took over the claimant's care from Dr. Wright, wrote that the claimant's arm complaints were "well known" to "[his] practice." That same day, the Carle Clinic, which Dr. Olivero worked for, issued a letter stating that the claimant could not return to work.

¶ 9 During her testimony, the claimant said that she continued to have numbness in both of her hands, a loss of sensation on the bottoms of her feet, numbness and pain in her legs, muscle spasms in her arms, and difficulty walking long distances. She said that she had difficulty standing more than 10 minutes–a problem she did not have before her January 2006 fall–and also had difficulty sitting for more than 10 minutes or regaining her balance after sitting. The claimant testified that she was unable to drive or carry heavy objects, and she stated that her physician had informed her that she was unable to work due to her symptoms. She said that Pinnacle had not offered her sedentary work, light duty work, or work of any kind, but on cross-examination she agreed that she also had not asked Pinnacle for any light-duty work. She explained that her doctors had ordered her not to work.

¶ 10 Dr. Wright testified via evidence deposition that he examined the claimant either during her hospitalization or in the ensuing month, reviewed her January 2006 MRI, and diagnosed her with cervical spinal stenosis, or a narrowing of the canal through which the spinal cord passes.

Following a February 21, 2006, MRI and a March 10, 2006, examination, Dr. Wright noted that the claimant's spinal cord appeared to be " 'settling down' " but that she still suffered from "significant narrowing" and persistent signal change. He also noted that, during the March 10 visit, the claimant reported weakness, swollen hands, and difficulty with balance. He agreed that, if the claimant was asymptomatic prior to her fall, then it would be reasonable to conclude that her symptoms were a result of her workplace injury. However, he also agreed that a typical patient reaches maximum medical improvement (MMI) from the claimant's type of spinal cord trauma within 6 months, and he said he had no reason to believe that the claimant's healing progress was any different.

¶ 11 Dr. Wright said that he recommended that the claimant undergo a decompression surgery. Dr. Wright described the main value of the surgery as "provid[ing] greater volume around the spinal cord and prevent[ing] a likelihood of her suffering further cord injury should she fall or otherwise injure herself again." He further explained that the surgery would increase the volume of spinal fluid around the claimant's spinal cord but that any decrease in volume that resulted from the claimant's workplace fall would have already resolved itself. Dr. Wright opined that the surgery would be solely preventative and would not relieve any of the symptoms of the claimant's workplace injury. When asked if the surgery he recommended was necessitated by the claimant's workplace fall, Dr. Wright responded that "the majority of what pathology we identified in January 2006, predated the fall." He continued: "Whether it ultimately would have become symptomatic and called attention to itself and required a surgery down the road, is speculative." Dr. Wright said that he did not know whether the claimant would have required surgery without her fall, but he did know that the claimant's problem was "brought to everyone's attention" due to the fall. Later in his deposition, Dr. Wright testified that he believed that the claimant's workplace injury accelerated her need for surgery; however, he then explained that the acceleration occurred because "she became symptomatic and it was brought to the attention of

the physicians involved in her care." When asked whether the claimant's fall caused further deterioration of her spinal canal, Dr. Wright responded that he did not "know that it further changed it" and said that he thought "it just brought to attention the changes that were already present."

¶ 12 In his evidence deposition, orthopedic surgeon Dr. Timothy VanFleet testified that he examined the claimant on May 17, 2006, in relation to the current claim. Dr. VanFleet recited the claimant's history of having fallen at work and experiencing continued back pain. He said that his physical examination revealed no neurologic deficits or spinal cord compression. Dr. VanFleet noted that MRI films taken in January 2006 showed that the claimant had a history of spinal canal stenosis, cervical spondylosis, and evidence of a "cord signal change within the spinal cord posterior to C4-5 and 6 which could be consistent with spinal cord contusion." Regarding the cord signal change, Dr. VanFleet wrote in his report of examination that the relationship between the claimant's fall and the changes was "unknown" because an MRI predating the accident might show that she had a pre-existing cord signal change. Regarding the stenosis, Dr. VanFleet said that stenosis takes time to develop and, therefore, preexisted the claimant's workplace accident. As for the spondylosis, Dr. VanFleet explained that the narrowing of her neck around the spinal cord was creating pressure on her spinal cord, and he noted that such patients usually require a decompression surgery. When asked whether the claimant's need for this surgery was causally related to her workplace accident, Dr. VanFleet responded that the claimant "had an underlying congenital problem" that was "no doubt present prior to her injury" and that "predisposed her to the difficulties she had with her neck when she fell ***, and that most likely contributed to the difficulties." He thus concluded that the fall was an "exacerbation of a preexisting condition." However, he continued to opine as follows:

> "The fact that this patient had a fall was not the reason that she needed to have the operation. The reason she needed to have the operation was because of the fact that she

> has severe spinal stenosis. *** I think she had some exacerbation of her cord signal change and perhaps her cervical spondylotic myelopathy. *** [I]f she wanted to avoid getting worse then she would need to have the operation. Now, again, that's not because of a work injury. That's because of her cervical spondylosis ***."

Dr. VanFleet then clarified that the claimant's cord changes were exacerbated by her fall but that her "stenosis didn't change as a result of the fall." He said that the claimant's "recognition of the fact that she had a problem *** was certainly helped along by the fall because now it became readily apparent ***." He further explained that "the damage that was done from the standpoint of her fall is done" and that "the reason going forward to recommend an operation for this individual is not because of the fall per se, but it's because of the fact that she has severe narrowing in her canal and she has a lot of cord signal change." At the end of the deposition, Dr. VanFleet opined that the claimant could perform sedentary or light-duty work.

¶ 13 Following the hearing held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2004)), the arbitrator found that the claimant sustained a work-related injury on January 14, 2006, and that her current condition of ill-being in her neck and back is causally connected to that employment injury. The arbitrator awarded the claimant an additional 16 weeks of TTD benefits for the period from March 3, 2008, through the date of the arbitration hearing on August 27, 2008. The arbitrator also determined that the claimant's recommended spinal decompression surgery is causally related to her employment injury .

¶ 14 Pinnacle sought review of the arbitrator's decision before the Commission which adopted and affirmed the arbitrator's decision with respect to the TTD benefits but reversed the arbitrator's decision to require Pinnacle to authorize the claimant's back surgery. In so ruling, the Commission found that the claimant's symptoms "[were] not simply the natural progression of [her] pre-existing cervical stenosis but the result of an acute incident" that either caused or exacerbated her condition. The Commission further found, based on her continued complaints

and the fact that she had not yet been released to work, that the claimant had not reached MMI, and it stated that, even if she had reached MMI, there was no evidence that Pinnacle had offered her light-duty or sedentary work. However, with regard to the decompression surgery, the Commission found that Drs. Wright and VanFleet both testified that the claimant's "injury brought to light her need for this surgery but neither testified that the injury itself caused the need for the surgery." The Commission stated that its ruling was no bar to further hearings regarding the claimant's entitlement to additional TTD benefits for her continued disability. See Thomas v. Industrial Comm'n, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 15 Both parties sought judicial review of the Commission's decision in the circuit court of Coles County. The circuit court confirmed the Commission's decision. The claimant now appeals, arguing that the Commission's refusal to require Pinnacle to authorize the decompression surgery recommended by Drs. Wright and VanFleet is against the manifest weight of the evidence. Pinnacle cross-appeals, arguing that the Commission's award of an additional 16 weeks of TTD benefits is against the manifest weight of the evidence.

¶ 16 At the outset, we note that the claimant devotes a large portion of her brief to a discussion of two Commission decisions she treats as precedential. Time and time again, however, we have admonished litigants that decisions of the Commission are not precedential and should not be cited. See Global Products v. Workers' Compensation Comm'n, 392 Ill. App. 3d 408, 413, 911 N.E.2d 1942 (2009); S&H Floor Covering, Inc. v. Workers' Compensation Comm'n, 373 Ill. App. 3d 259, 266, 870 N.E.2d 821 (2007). We, therefore, do not further consider the parties' discussion of prior Commission decisions.

¶ 17 Under section 8(a) of the Act (820 ILCS 305/8(a) (West 2006)), a claimant is entitled to recover reasonable medical expenses, the incurrence of which are causally related to an accident arising out of and in the scope of her employment and which are necessary to diagnose, relieve, or cure the effects of her injury. University of Illinois v. Industrial Comm'n, 232 Ill. App. 3d 154,

164, 596 N.E.2d 823 (1992). Neither Pinnacle nor the Commission has disputed that the claimant suffers from a condition that necessitates decompression surgery. The Commission found, however, that the claimant's condition is not causally related to her workplace injury. Whether a causal relationship exists between a claimant's employment and her injury is a question of fact to be resolved by the Commission, and its resolution of such a matter will not be disturbed on appeal unless it is against the manifest weight of the evidence. TTC Illinois, Inc./Tom Via Trucking v. Illinois Workers' Compensation Comm'n, 396 Ill. App. 3d 344, 356, 918 N.E.2d 570 (2009). For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. TTC Illinois, 396 Ill. App. 3d at 356.

¶ 18 The Commission's decision on this point centered largely on the testimony of Drs. Wright and VanFleet. Although some excerpts of the doctors' testimony could be read in isolation to indicate that the claimant's fall exacerbated her pre-existing spinal stenosis, the totality of both doctors' testimony made clear their opinions that the claimant's workplace accident accelerated her timetable for surgery in only one way: it caused her treating physicians to become aware of her pre-existing condition and thereby notice her need for surgery. Indeed, Dr. Wright testified that he believed spinal cord trauma of the type the claimant suffered at work would heal, and he explained that decompression surgery would have no effect on the claimant's spinal cord injury. With this evidence to support the Commission's decision, we cannot say that the Commission's finding was against the manifest weight of the evidence.

¶ 19 In its cross-appeal, Pinnacle argues that the Commission’s award to the claimant of an additional 16 weeks of TTD benefits for the period from March 3, 2008, through the date of the arbitration hearing on August 27, 2008, is against the manifest weight of the evidence. (Pinnacle has not contested the claimant's entitlement to TTD benefits for the period prior to March 3, 2008, and indeed has paid those benefits.) In her reply brief, the claimant does not address Pinnacle's cross-appeal. As Pinnacle observes in its cross-reply brief, we must analyze this cross-

appeal as if the claimant had filed no brief at all. See Plooy v. Paryani, 275 Ill. App. 3d 1074, 1088, 657 N.E.2d 12 (1995). Under the principles described in First Capitol Mortgage Corp. v. Talandis Construction Corp., 63 Ill. 2d 128, 133, 345 NE.2d 493 (1976), we deem the issues raised in Pinnacle's cross-appeal sufficiently simple to allow us to address them without the aid of a brief from the claimant.

¶ 20 A claimant is temporarily and totally disabled from the time an injury incapacitates her from the workforce until such time as she is as far recovered or restored as the permanent character of her injury will permit. Archer Daniels Midland Co. v. Industrial Comm'n, 138 Ill. 2d 107, 118, 561 N.E.2d 623 (1990). Once an injured claimant has reached MMI, she is no longer eligible for TTD benefits. Archer Daniels Midland, 138 Ill. 2d at 118; Nascote Industries v. Industrial Comm'n, 353 Ill. App. 3d 1067, 1072, 820 N.E.2d 570 (2004). The period of time during which a claimant is temporarily and totally disabled is a question of fact to be determined 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. Archer Daniels Midland, 138 Ill. 2d at 119-20.

¶ 21 In support of its argument that the claimant was not entitled to TTD benefits from March 3, 2008, through August 27, 2008, Pinnacle cites testimony from Dr. VanFleet that, by May 2006, the claimant's spinal cord trauma had resolved, as well as testimony from Dr. Wright that most injuries of this kind heal within six months. Pinnacle also cites testimony from the doctors that the claimant had likely reached MMI in 2006 and the fact that the claimant sought minimal medical treatment from May 2006 until 2008. Based on this evidence, Pinnacle argues that any increase in the claimant's symptoms in the period from six months after her injury to the time of her testimony was attributable not to her workplace injury, but to deterioration of her pre-existing condition.

¶ 22 Pinnacle's argument rests on a plausible reading of the medical evidence in this case. However, the Commission found that the claimant's symptoms began with her workplace fall and

persisted to the time of her testimony at the arbitration hearing. Accordingly, while it would certainly have been reasonable for the Commission to conclude that the claimant reached MMI in 2006 and then later suffered renewed and worsened symptoms due to the degeneration of her pre-existing condition, the Commission also had evidence that would allow it to find that the claimant's symptoms were persistent from the time of her accident to her testimony. In fact, while it is quite possible that any interruption in the claimant's treatment for her spinal condition demonstrates a concurrent alleviation of her symptoms, it is also possible that the interruption in her treatment was a result of her pursuit of an authorization for decompression surgery. Further, as the Commission noted, the claimant's testimony that her symptoms precluded her from working was confirmed by evidence that her treating physicians ordered her to refrain from work in 2007 and 2008. In short, Pinnacle's interpretation of the factual record is plausible, but the Commission's decision to credit the claimant's testimony regarding her symptoms is also plausible. Because both interpretations of the record are plausible, we cannot say that the interpretation the Commission chose is against the manifest weight of the evidence.

¶ 23 Based upon the foregoing analysis, we affirm the judgment of the circuit court, which confirmed the decision of the Commission, and remand the cause to the Commission for further proceedings pursuant to Thomas, 78 Ill. 2d 327, 399 N.E.2d 1322.

¶ 24 Affirmed.