

Workers' Compensation
Commission Division
Filed: October 24, 2012

No. 5-11-0307WC

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
FIFTH JUDICIAL DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

JOHNNIE BULLOCK,)	Appeal from the
)	Circuit Court of
Appellant,)	Franklin County.
)	
v.)	
)	No. 10-MR-12
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, <i>et al.</i> ,)	
(Consolidation Coal Co.,)	Honorable
)	Melissa A. Drew,
Appellee).)	Judge, Presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice McCullough and Justice Hudson concurred in the judgment.
Justice Holdridge dissented from the judgment, joined by Justice Stewart.

ORDER

Held: The decision of the Illinois Workers' Compensation Commission concluding that the claimant did not suffer CWP or COPD as a result of his employment with Consolidation Coal Co. is not against the manifest weight of the evidence.

¶ 1 The claimant, Johnnie Bullock, appeals from an order of the Circuit Court of Franklin County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission), concluding that his condition of ill-being is not causally related to his employment with Consolidation Coal Co. and denying him benefits pursuant to the Illinois Workers' Occupational Diseases Act (Act) (820 ILCS 310/1 *et seq.* (West 2004)). 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 held on October 10, 2007.

¶ 3 The claimant began working for a predecessor to Consolidation in 1969, and, during his career, he held positions of car operator (1 month), general inside laborer (4 years, 9 months), maintenance trainee (9 months), underground mechanic (3 years, 2 months), plant mechanic (17 years, 11 months), and plant control operator (6 years). The parties stipulated that, "during his coal mining career he was regularly exposed to coal and rock dust," as well as "welding fumes, diesel fumes, magnetite and high sulfur smoke." He testified that he began to experience breathing problems in "the early '90's," usually when he was performing strenuous work but also during everyday activities such as showering, and he said his problems "got worse" as he continued to work. The claimant stated in his testimony that he began smoking when he was 17 years old and smoked "a pack, pack and a half a day" until 1999, when he was 55 years old. His last day of work for Consolidation was January 2, 2001.

¶ 4 Although the parties presented extensive medical records for the claimant, many of those records focus on the condition of his heart, which required quadruple bypass surgery in 1999, and his knee, which he injured near the end of his tenure with Consolidation. The records nonetheless occasionally reference the condition of the claimant's lungs, often in observations contained in reports of chest x-rays taken to treat his heart condition.

¶ 5 The medical records reveal that, on July 31, 1988, the claimant was admitted to Marshall Browning Hospital complaining of chest pain. On admission, the emergency room physician noted that his breathing demonstrated "coarse rales" that cleared after coughing. A July 31 x-ray report noted "mild pulmonary vascular congestion superimposed on emphysematous lungs." According to records of his admission, a pulmonary function study performed on August 2 showed a "mild impairment" and prompted doctors to advise him to "remain off cigarettes." An

No. 5-11-0307WC

August 2, x-ray and lung scan report noted "mild fibro-emphysematous changes" as well as "matching defects" in perfusion and ventilation scans, and it indicated an impression of mild COPD and "very low probability of pulmonary emboli."

¶ 6 A report of a February 22, 1989, x-ray taken at Marshall Browning Hospital observed "evidence of pulmonary vascular congestion" but no evidence of active pulmonary inflammatory infiltration or consolidation. The report listed an impression of "possible cardiomegaly with evidence of mild pulmonary vascular congestion." According to records of his short admission at St. Louis University hospital one day later, a portable examination of the claimant's chest revealed that his lungs were "quite clear."

¶ 7 A November 15, 1995, radiology report of the claimant's chest noted "streaky opacities in the lingula" which were "most suggestive of subsegmental atelectasis and scarring." The report also noted "evidence of old granulomatous disease" but said the claimant's lungs were "otherwise clear." An April 2, 1997, chest x-ray report noted "discoid atelectasis in the left mid-lung and the right lung base" as well as "granuloma in the right upper lobe," but the report noted an impression of discoid atelectasis and made no mention of CWP.

¶ 8 A November 11, 1998, radiology report regarding the claimant's chest noted evidence of old granulomatous disease, "streaky densities *** suggestive of a combination of subsegmental atelectasis and/or scarring," and a "tiny nodular density in the right lung apex [which was] probably a small granuloma." The report identified "no definite acute infiltrates or effusions" in the claimant's lungs. A February 15, 1999, radiology study of the claimant's chest stated that his lung fields were "clear," and it included an impression that there was "evidence of old granulomatous disease" but no evidence of "acute infiltrates or effusions." A February 16 x-ray report, taken in relation to the claimant's heart treatment, noted a "calcified granuloma in the right apex" but said the "lungs [were] otherwise clear."

¶ 9 On February 17, 1999, the claimant underwent a quadruple coronary bypass surgery. A

portable chest x-ray taken that same day noted that his visualized lungs were "clear." A report of a February 18 portable chest x-ray observed no active pulmonary disease in the claimant. Reports of chest x-rays undertaken on February 19 and 20 found "minimal atelectasis" in the claimant's left lung. The February 19 report also noted small bilateral pleural effusions.

¶ 10 A March 29, 1999, chest x-ray report noted "an area of fibrosis seen anteriorly on the lateral view" but "[n]o active lung disease." An April 23, 1999, chest x-ray report noted an "approximately 2 [centimeter] sized mass density in the *** upper lobe" of the claimant's lungs. On October 28, 1999, the claimant underwent a pulmonary function test, and the interpreting physician wrote that the test results were "normal."

¶ 11 Following a March 23, 2000, chest x-ray, treating radiologists reported "[a] few tiny granulomas *** in the lung fields bilaterally." Also on March 23, Dr. John Gill examined the claimant, who reported shortness of breath since his bypass surgery. Dr. Gill noted that the claimant "wheeze[d] from time to time and [did] cough but the cough [was] not productive." Dr. Gill wrote that "the two possibilities that need to be considered are the fact that he does have either emphysema from his cigarette smoking or some degree of black lung. I think the other possibility would also be a pulmonary embolus." A report of a March 24, 2000, pulmonary function test indicated that the claimant had "a mild obstructive defect." A ventilation-perfusion scan completed that same day, to treat the claimant's complaints of shortness of breath, revealed "some diffuse bilateral air trapping" but no evidence of ventilation abnormality and no indication of pulmonary embolus. On March 25, Dr. Gill performed angioplasty and stenting at the claimant's right coronary artery, and he wrote on March 30 that the procedure might help his breathing if his shortness of breath was related to his heart.

¶ 12 By the end of his employment in 2001, the claimant testified, he noticed breathing difficulty after climbing one and one-half flights of stairs. He said that, toward the end of his tenure with Consolidation, his supervisor would help him complete his work, which he was

unable to finish during his shift. The claimant testified that, since his retirement in 2001, the claimant's breathing had become "a little worse." On cross-examination, the claimant agreed that, when he left Consolidation, he told them that he was leaving due to knee problems and did not mention respiratory problems.

¶ 13 In a January 30, 2001, note documenting a follow-up visit for his heart treatment, Dr. Jeffrey Gibbs, a cardiologist, stated the claimant's cardiac history before writing, "I also believe that he has some pulmonary disease perhaps from working at the coal mines and smoking in the past."

¶ 14 A report of a February 19, 2001, x-ray of the claimant's chest stated that the claimant's lungs were "clear." A report of a May 7, 2001, two-view study of the claimant's chest noted minor atelectasis and possible limited pneumonitis, and it indicated an impression of "emphysematous change" and fibrosis.

¶ 15 Dr. Jerome Wiot, a radiologist and certified B-reader, wrote in letters to Consolidation's attorney that he saw no evidence of CWP in the claimant's lungs based on x-rays taken on June 30, 1994; April 2, 1997; January 19, 2000; February 19, 2001; and December 2, 2005. He noted various anomalies in the claimant's lungs, but he attributed none of them to CWP.

¶ 16 Dr. Michael Alexander, a radiologist and certified B-reader, wrote in March 2004 and September 2006 that he formed an impression that the claimant suffered from CWP based on x-rays taken on April 2, 1997; February 19, 2001; and February 19, 2004. Dr. Alexander based his impression on the presence of "[s]mall round opacities" that were present "bilaterally."

¶ 17 Dr. Saeed Khan, who examined the claimant on June 21, 2005, at the claimant's request, diagnosed the claimant as suffering from COPD and simple CWP. He based this opinion on the claimant's performance on pulmonary function testing, as well as his review of x-ray images that showed "minimal change" in the claimant's lungs. During his evidence deposition, Dr. Khan opined that the claimant's exposure to coal mine dust contributed to both conditions, but he also

attributed the COPD to the claimant's smoking. Dr. Khan later explained that the claimant's lungs "ha[d] been damaged to some extent as a result of his coal worker's job *** as well as smoking." Dr. Kahn clarified that it was not possible to quantify or separate the effect of the two factors—coal dust exposure and smoking—that caused the claimant's condition, and he said that he reached his conclusions by relying on the claimant's medical and occupational history. On cross-examination, Dr. Khan agreed that he did not review any of the claimant's medical records before the June 21, 2005, examination. He also agreed on cross-examination that shortness of breath can be caused by obesity and a history of smoking, both traits the claimant possessed.

¶ 18 On November 14, 2005, and December 7 or 12, 2005, Dr. Peter Tuteur examined the claimant and conducted a review of the claimant's medical records at Consolidation's request. Based on pulmonary function testing, Dr. Tuteur concluded that the claimant had a "very minimal obstructive abnormality." In his written report, Dr. Tuteur elaborated that the claimant suffered from a "very mild simple chronic bronchitis associated with minimal obstructive abnormality and no impairment of gas exchange," and Dr. Tuteur attributed this condition solely to the claimant's history of smoking. Dr. Tuteur recognized that Dr. Kahn had concluded from his own pulmonary function testing that the claimant had a more significant impairment, but Dr. Tuteur opined that discrepancies in Dr. Kahn's test results indicated that the claimant offered Dr. Kahn "inconsistent effort." Dr. Tuteur further noted that he observed no signs of coal-related lung impairment in 2004 and 2005 x-rays of the claimant's chest. Dr. Tuteur concluded that the claimant did not experience a loss of lung function due to coal mining. In fact, Dr. Tuteur opined that, from a solely pulmonary standpoint, the claimant could be medically cleared to return to work for Consolidation. On cross-examination, Dr. Tuteur agreed that it is possible that a person suffering from simple CWP could still have normal pulmonary function testing.

¶ 19 Following a hearing, the arbitrator found that the claimant suffered from CWP as a result of his exposure to coal mine dust while working for Consolidation. The arbitrator awarded the

No. 5-11-0307WC

claimant \$516.15 per week for 50 weeks, because his injuries constituted a permanent and partial disability to 10% of the person as a whole.

¶ 20 Consolidation sought review of the arbitrator's decision before the Commission. On review, the Commission reversed the arbitrator's award, finding that the claimant failed to prove that he suffered from either CWP or COPD as a result of his employment with Consolidation, and concluding that his pulmonary symptoms were attributable to a heart condition, his smoking habit, or sickness unrelated to his employment. In so holding, the Commission reviewed the claimant's medical records at some length, and it noted that many of his complaints of shortness of breath were concurrent with acute heart problems. It also noted that the claimant's medical records contained few, passing references to CWP, and it reasoned that those references were insufficient to prove an occupational disease. The Commission denied the claimant benefits under the Act.

¶ 21 The claimant sought judicial review of the Commission's decision in the circuit court of Franklin County. The circuit court confirmed the Commission's decision, and the claimant now appeals.

¶ 22 The claimant's only contention on appeal is that the Commission's finding, that he failed to prove that he incurred a pulmonary condition as a result of his work for Consolidation, is against the manifest weight of the evidenced.

¶ 23 To recover benefits under the Act, a claimant bears the burden of proving both that he suffers from an occupational disease and that a causal connection exists between the disease and his employment. *Bernardoni v. Industrial Comm'n*, 362 Ill. App. 3d 582, 596, 840 N.E.2d 300 (2005); *Anderson v. Industrial Comm'n*, 321 Ill. App. 3d 463, 467, 748 N.E.2d 339 (2001). The Commission's rejection of the claimant's claim invokes both of these elements. The Commission's decision includes a finding that he did not suffer from CWP, and a finding that any other pulmonary ailments from which he does suffer were not causally related to his work for

Consolidation.

¶ 24 It is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *Docksteiner v. Industrial Comm'n*, 346 Ill. App. 3d 851, 856, 806 N.E.2d 230 (2004). The Commission's decision on a question of fact will not be disturbed on review unless it is against the manifest weight of the evidence. *Docksteiner*, 346 Ill. App. 3d at 856-57. For a finding to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Docksteiner*, 346 Ill. App. 3d at 857. The Commission's finding as to whether a claimant suffered an occupational disease is reviewed under this manifest-weight standard. See *Freeman United Coal Mining Co. v. Workers' Compensation Comm'n*, 386 Ill. App. 3d 779, 782-83, 901 N.E.2d 906 (2008).

¶ 25 The claimant first takes issue with the Commission's decision to disregard the opinion of Dr. Kahn, his medical expert. In rejecting Dr. Kahn's opinions, the Commission noted that he had failed to review the claimant's medical records before rendering his conclusions. As set forth above, we will not upset the Commission's resolution of conflicting evidence, or its assessment of the credibility of witnesses, unless those determinations are against the manifest weight of the evidence. The fact that Dr. Kahn failed to consult the claimant's medical records seems to us to be ample reason to disregard his opinions, and we therefore reject the claimant's contention that the Commission erred in doing so.

¶ 26 Partly to support his argument that the Commission should have lent credence to Dr. Kahn's testimony, and partly to challenge the Commission's finding that he did not suffer from CWP, the claimant also decries the Commission's reliance on the notion that his medical records failed to establish the presence of CWP. The claimant contends that the Commission's approach is "conjectural," because those same medical records also failed to rule out the presence of CWP. The claimant thus asserts that the medical records are, at worst, not definitive on the issue, and he argues that the Commission could not base its findings on such inconclusive medical evidence.

In so arguing, the claimant overlooks his burden of proof in this case. As we stated at the outset, a claimant bears the burden of establishing both that he suffered from an occupational disease and that the disease was causally related to his employment. The Commission did not need definitive medical records ruling out CWP to make a finding that the claimant failed to prove that he suffered from CWP.

¶ 27 Further, although the claimant's medical records are not definitive, they offer broad support for the Commission's decision. The majority of the medical records focus on the claimant's heart condition, but those records that address his lung disease make almost no mention of CWP. Indeed, the medical records' strongest mention of CWP comes in the form of Dr. Gibbs's notation that the claimant has pulmonary disease "perhaps from working at the coal mines and smoking in the past." Even after this statement, which falls far short of an opinion that the claimant suffered from CWP, the claimant's physicians apparently saw no reason to act on the possibility that the claimant suffered from CWP. In addition, we observe that Dr. Wiot examined the chest x-rays in the claimant's medical records and concluded that they did not indicate the presence of CWP. Based on all this evidence, we conclude that the Commission's finding, that the claimant did not suffer from CWP, is not against the manifest weight of the evidence.

¶ 28 The claimant also challenges the Commission's finding that his respiratory disease has no causal relationship to his employment with Consolidation. Whether a causal connection exists is also 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. *Bernadoni*, 362 Ill. App. 3d at 597.

¶ 29 In its ruling, the Commission acknowledged the evidence that the claimant suffered from some sort of respiratory ailment, but it attributed the ailment to his heart condition and long-time smoking habit. Again, there is very little, if anything, in the record to dictate another result.

Although Dr. Gibbs noted the possibility that the claimant's lung problems were related to his employment, he in the same sentence also noted that they might be attributable to his smoking. Even the claimant's expert, Dr. Kahn, attributed his respiratory ailments at least partially to his smoking habit. In addition, although the Commission did not rely expressly on Dr. Tuteur's opinion, he opined that the claimant's condition was attributable solely to his smoking.

¶ 30 Further, the Commission engaged in an extensive review of the evidence that led it to conclude that the claimant had failed to prove that his symptoms were caused by something other than his heart problems and smoking habit. It observed that many of the claimant's lung complaints and lung tests coincided with cardiac complaints, and it concluded from that fact that those recorded complaints of shortness of breath were most likely related to his heart condition. The Commission also recognized diagnostic testing suggesting the presence of granulomatous disease, but it stated that there was no medical evidence presented to suggest a link between that and coal-mining-related disease. The claimant does not challenge that assertion in his briefs on appeal. Although the claimant is correct that several of his medical records suggest a respiratory problem, the record contains sufficient evidence to allow the Commission to conclude that the claimant did not satisfy his burden to prove a causal link between those problems and his work for Consolidation.

¶ 31 The foregoing analysis leads us to conclude that the Commission's finding, that the claimant does not suffer from CWP or COPD related to his employment with Consolidation, is not against the manifest weight of the evidence. Consequently, we affirm the judgment of the circuit court which confirmed the Commission's decision.

¶ 32 Affirmed.

¶ 33 JUSTICE HOLDRIDGE, dissenting:

¶ 34 I respectfully dissent. I would hold that the Commission's finding that the claimant's COPD was not causally related to his employment with Consolidation was against the manifest

weight of the evidence.

¶ 35 It is undisputed that the claimant was afflicted with COPD. It is also undisputed that the claimant was regularly exposed to coal and rock dust during his 33-year career in coal mining. The only issue for the Commission to determine was whether the claimant's employment with Consolidation was *a* causative factor in his COPD. *Bernardoni v. Industrial Comm'n*, 362 Ill. App. 3d 582, 596 (2005). Once a claimant has established that he has COPD, he need "only prove that the inhalation of coal dust was a causative factor in his COPD, not that it was the only factor or that his cigarette smoking was not also a contributing factor." *Gross v. Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, ¶ 22.

¶ 36 In the instant matter, the Commission attributed the claimant's COPD solely to his smoking habit and illnesses unrelated to his employment. In so doing, it found that the claimant's 33 years of coal dust exposure had no causative relationship to his COPD. This conclusion is against the manifest weight of the evidence. Once a claimant can establish that he has COPD and that he was subjected to significant inhalation of coal dust during his employment, the burden must shift to the employer to offer "an adequate explanation or factual basis for a determination that the sole cause of the claimant's obstructive lung disease is cigarette smoking" or some other nonemployment related factor. *Gross* at ¶ 26. The facts presented by the employer must be sufficient to overcome the medically recognized fact that inhalation of coal dust is a contributing or aggravating cause of COPD, even where the claimant also has a significant history of cigarette smoking. *Id.*

¶ 37 In the instant matter, the employer has failed to meet its burden. Dr. Tuteur, the employer's examining physician, observed that the claimant had signs of "minimal obstructive abnormality" which he attributed solely to smoking. However, Dr. Tuteur acknowledged that: (1) coal dust inhalation could cause obstructive lung disease; (2) coal dust inhalation causes lung damage comparable to smoking; (3) coal dust inhalation can produce the same results as smoking

No. 5-11-0307WC

induced COPD; and (4) the claimant had a significant exposure to coal dust during his 33-year career in coal mining. Given these admissions, Dr. Tuteur's opinion that the claimant's 33 years of exposure to coal dust had no causative relationship to his obstructive lung condition is simply insufficient to support the Commission's finding that the claimant's COPD was caused solely by cigarette smoking and other nonemployment factors. On this record, the opposite conclusion is clearly apparent.

¶ 38 Accordingly, I would reverse the Commission's decision that the claimant failed to prove an exposure to an occupational disease arising out of and in the course of his employment and that his condition of ill-being is causally related to his employment. I would remand the matter to the Commission for a determination as to the nature and extent of any disablement which may have resulted from the claimant's COPD.

¶ 39 JUSTICE STEWART joins in this dissent.