

2013 IL App (1st) 121588WC-U  
NO. 1-12-1588WC  
FILED: November 25, 2018

**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

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

DANIEL KARMAZIN,	)	Appeal from
Appellant,	)	Circuit Court of
v.	)	Cook County
THE ILLINOIS WORKERS' COMPENSATION	)	No. 11L51244
COMMISSION <i>et al.</i> (Area Erectors, Appellee).	)	
	)	Honorable
	)	Margaret Brennan,
	)	Judge Presiding.

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

**ORDER**

- ¶ 1 *Held:* The Commission's finding that claimant failed to prove a causal connection between his work accident and his current condition of ill-being was not against the manifest weight of the evidence.
- ¶ 2 On October 18, 2007, claimant, Daniel Karmazin, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 through 30 (West 2006)), seeking benefits from the employer, Area Erectors, for "multiple injuries" suffered on August 7, 2007. Following a hearing, an arbitrator found claimant proved he

sustained injuries arising out of and in the course of his employment with the employer on August 7, 2007, and awarded claimant temporary total disability (TTD) benefits in the amount of \$992.96 per week, from August 21, 2007, through September 10, 2007; permanent partial disability (PPD) benefits in the amount of \$636.15 per week for 21.5 weeks, representing 10% loss of the left leg; and medical expenses in the amount of \$1,063.20.

¶ 3 Both claimant and the employer filed a petition for review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). On review, the Commission, with one commissioner dissenting, modified the arbitrator's decision finding "the work accident of August 7, 2007, resulted in only a temporary aggravation of Petitioner's pre-existing left knee condition of ill-being, with this condition returning to baseline on February 14, 2008." The Commission vacated the award of TTD benefits and PPD benefits, and otherwise affirmed and adopted the arbitrator's decision. Thereafter, claimant filed a petition seeking judicial review in the circuit court of Cook County. The circuit court confirmed the Commission's decision.

¶ 4 Claimant appeals, arguing the Commission's finding that claimant's "work accident of August 7, 2007, resulted in only a temporary aggravation of Petitioner's pre-existing left knee condition of ill-being, with this condition returning to baseline on February 14, 2008," is against the manifest weight of the evidence. We affirm the circuit court's judgment confirming the Commission's decision.

¶ 5 I. BACKGROUND

¶ 6 The following factual recitation is taken from the evidence presented at the

arbitration hearing on January 7, 2010.

¶ 7 The 46-year-old claimant testified that he worked as a union journeyman ironworker. On August 7, 2007, claimant worked for the employer completing the structural work on a new junior high school. Claimant worked alone from a scissors lift, placing bolts and small pieces of angle iron. Claimant testified he "happened to jump out of the lift and land down on both feet," jamming his left knee. Claimant testified he jumped approximately six and one-half feet, landing on a concrete floor. He felt intense pain. Claimant continued to work and did not report the accident. He worked with five other individuals but they were not working in the area claimant worked and each ate lunch in his own car.

¶ 8 Claimant testified that he injured his left knee in 1982, resulting in surgery. Following surgery, claimant experienced two "arthritic flare-ups" in 2005 and 2006, and sought treatment in an emergency room for pain. He reported no other problems. Claimant had worked for the employer for approximately one year. He had not missed work due to his left knee and had not sought medical treatment for his left knee during that year.

¶ 9 Claimant testified that his left knee pain worsened after August 7, 2007. Claimant sought treatment with his general practitioner, Dr. Stephen Hung, on August 21, 2007. Claimant complained of left knee pain after jumping from a truck three weeks earlier. Claimant had a history of left knee osteoarthritis and had undergone left knee surgery. Dr. Hung recommended claimant see an orthopedist, ordered left knee x-rays, and prescribed Relafen and Ultram. The left knee x-rays revealed significant degenerative osteoarthritic changes in the medial knee joint compartment with bone on bone articulation, subchondral cyst formation, osteophytic formation,

and mild to moderate changes in the patellofemoral region.

¶ 10 Dr. Hung referred claimant to Dr. Kevin Walsh, an orthopedic surgeon. In a treatment note dated August 23, 2007, Dr. Walsh noted claimant had a history of arthritis and "arthritic flares." Claimant had seen Dr. E. Thomas Marquardt in the past and he suggested surgery. Claimant reported experiencing good relief from his symptoms with corticosteroid injections. Dr. Walsh advised claimant that he had severe osteoarthritis and suggested knee replacement. Claimant was hesitant to have surgery as he wanted to work for 8 1/2 more years. Dr. Walsh advised claimant that he doubted claimant would be able to work for 8 1/2 more years given his severe osteoarthritis. Claimant underwent a steroid injection for pain management.

¶ 11 Claimant returned to Dr. Walsh on September 6, 2007, at which time the doctor described claimant as "fairly adamant that he does not want to have surgery." Claimant advised Dr. Walsh that he wanted to return to work on September 10, 2007, and Dr. Walsh provided claimant with a note releasing claimant to full duty work as of September 10, 2007. Dr. Walsh instructed claimant to continue taking Voltaren for his osteoarthritis.

¶ 12 Claimant completed an injury report dated August 30, 2007, and stamped received on September 7, 2007. Claimant reported getting out of a scissors lift by grabbing the rear crossbar with both hands and landing with both feet on the ground. Claimant felt pain when he landed on the ground.

¶ 13 A treatment note by board certified internist Dr. Zeina Kalache on September 24, 2007, states she met with claimant to discuss his left knee pain and a workers' compensation case. Dr. Kalache noted claimant had experienced left knee pain for years, with exacerbations in

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2005 and 2006. Claimant reported experiencing increased left knee pain and difficulty walking since an injury at work on August 7, 2007. Claimant was told before August 7, 2007, he needed knee replacement surgery but "want[ed] to hold off as long as necessary." Dr. Kalache did not consider the August 2007 work accident to fall under workers' compensation based on claimant's long history of left knee degenerative joint disease. She recommended claimant see another orthopedic surgeon to discuss his treatment options.

¶ 14 On October 15, 2007, claimant sought treatment with Dr. Brian Cole, an orthopedic surgeon affiliated with Rush University Medical Center. Claimant completed a general information sheet stating he last worked on September 20, 2007. He reported moderate left knee problems beginning on August 20, 2007, and anticipated a worker's compensation case involving his injury. According to claimant, while exiting a scissors lift at work, he "grabbed handrail, dropped down and landed on both feet." Claimant had experienced constant and severe left knee pain since his work accident. Claimant reported undergoing a recent cortisone injection but it did not provide pain relief as it had in 2005 and 2006.

¶ 15 According to Dr. Cole's treatment note, claimant reported a work injury on August 20, 2007, while stepping down from a scissors lift. Claimant's x-rays revealed nearly bone on bone arthritis in the medial tibiofemoral compartment of the left knee. Dr. Cole stated an impression of "left knee significant varus alignment, medial compartment osteoarthritis, exacerbation of a pre-existing condition 8/20/2007" and prescribed a course of physical therapy. Dr. Cole limited claimant to no squatting, kneeling, or climbing. On November 19, 2007, Dr. Cole reported that claimant had made significant progress. Dr. Cole recommended claimant

continue with physical therapy and "may continue to work with no squatting, kneeling or climbing at this juncture." On February 14, 2008, Dr. Cole's treatment note states:

"[Claimant] is seen today for reevaluation of his left knee. Overall, he is doing very well at this time. We placed him in a physical therapy program in November of 2007. He has done very well and states the knee has made great improvement and he feels great at this time. He is tolerating the discomfort he has by taking Tylenol or Dapro pm. "

¶ 16 Upon physical examination, Dr. Cole reported a two degree loss of full extension and flexion to 125 degrees. Claimant had no tenderness over the medial or lateral aspect of the knee and no effusion present. Dr. Cole cleared claimant "to continue to advance to all activities as tolerated restriction free," noting claimant understood and agreed.

¶ 17 At the request of his attorney, claimant sought an evaluation by Dr. Jeffrey Coe, the medical director for Occupational Medicine Associates of Chicago. In a report dated June 16, 2008, Dr. Coe recorded a history of a left knee injury when claimant jumped down from a lift at work on August 7, 2002. Claimant underwent open left medial meniscectomy in 1982 and experienced a flare of pain in his left knee in 2005 and 2006. X-rays taken on October 10, 2005, revealed medial compartment osteoarthritis, and on March 17, 2006, showed advanced osteoarthritis with medial joint margin narrowing. Claimant noted improvement following treatment, including medication for pain in 2005, and a steroid injection in 2006. Additional treatment options were discussed with claimant following the flare-up of pain in 2006, including

possible surgery for arthroscopic exploration or tibial osteotomy. Claimant reported working full duty until the accident on August 7, 2007.

¶ 18 Dr. Coe opined that the injury aggravated preexistent degenerative arthritis within the left knee causing acute and chronic left knee synovitis and pain. According to Dr. Coe, claimant underwent conservative therapy with limited symptomatic improvement. Dr. Coe opined that based on his findings, there was a causal relationship between the injury on August 7, 2007, and claimant's current symptoms and state of impairment. \

¶ 19 At the request of the employer, Dr. David Raab, an orthopedic surgeon with the Center for Orthopaedic Surgery, reviewed claimant's medical records. In a report dated April 23, 2009, Dr. Raab noted his review of x-rays on October 10, 2005, October 21, 2005, and August 21, 2007, which showed claimant suffered severe degenerative arthritis with bone on bone changes in the medial compartment. Dr. Raab opined that, assuming claimant suffered an injury on August 7, 2007, "it is possible that he may have aggravated an osteoarthritic knee however, I do believe that based on the information that I have, it was a temporary aggravation of a pre-existing condition. It appears that based on these records, specifically Dr. Cole's record of February 14, 2008, the patient seems to have recovered quite well and was released back to all activities as tolerated, restriction free." Further, Dr. Raab stated that "further treatment for this knee is related to the severe degenerative arthritis in his left knee which is progressive in nature and is not related to the alleged work related injury of August 7, 2007."

¶ 20 Claimant testified he continues to experience left knee pain daily. At the time of the arbitration hearing on January 7, 2010, claimant reported he last worked on December 29,

2009. Claimant clarified for the arbitrator that he did not seek authorization for surgery as a result of his work accident.

¶ 21 Gary Dunlap testified that he was a foreman for the employer on August 7, 2007.

He believed that claimant may have used a scissors lift on August 7, 2007, while working.

Claimant did not report an injury to Dunlap and continued to work after August 7, 2007. Dunlap did not observe that claimant had any "physical difficulties" while working.

¶ 22 Following the hearing, the arbitrator found claimant proved he sustained injuries

arising out of and in the course of his employment with the employer on August 7, 2007, and

awarded claimant TTD benefits in the amount of \$992.96 per week, from August 21, 2007,

through September 10, 2007; PPD benefits in the amount of \$636.15 per week for 21.5 weeks,

representing 10% loss of the left leg; and medical expenses in the amount of \$1,063.20.

¶ 23 Both claimant and the employer filed a petition for review of the arbitrator's

decision before the Commission. On review, the Commission, with one commissioner dissent-

ing, modified the arbitrator's decision finding "the work accident of August 7, 2007, resulted in

only a temporary aggravation of Petitioner's pre-existing left knee condition of ill-being, with this

condition returning to baseline on February 14, 2008." The Commission vacated the award of

TTD benefits and PPD benefits, and otherwise affirmed and adopted the arbitrator's decision.

¶ 24 The dissenting commissioner found that claimant failed to prove he sustained

injuries arising out of and in the course of his employment with the employer on August 7, 2007.

Specifically, the commissioner found the record "devoid of any evidence showing Petitioner

'jumped' off the lift on August 7, 2007 but 'did not really perceive himself as having an injury

until August 20, 2007, when he realized he could no longer work.' "

¶ 25 Thereafter, claimant filed a petition seeking judicial review in the circuit court of Cook County. The circuit court confirmed the Commission's decision, and this appeal followed.

¶ 26 II. ANALYSIS

¶ 27 Claimant argues that the Commission's decision finding his "work accident of August 7, 2007, resulted in only a temporary aggravation of Petitioner's pre-existing left knee condition of ill-being, with this condition returning to baseline on February 14, 2008," is incorrect as a matter of law. According to claimant, the Commission's analysis is directly in opposition to our Supreme Court's dictates in *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 797 N.E.2d 665 (2003).

¶ 28 In workers' compensation cases the Commission is the ultimate decisionmaker. *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 173, 866 N.E.2d 191, 199 (2007). The Commission weighs the evidence presented at the arbitration hearing and determines where the preponderance of that evidence lies. *Roberson*, 225 Ill. 2d at 173, 866 N.E.2d at 199. A reviewing court will not set aside the Commission's decision unless its analysis is contrary to law or its fact determinations are against the manifest weight of the evidence. *Roberson*, 225 Ill. 2d at 173, 866 N.E.2d at 199. A finding of fact is contrary to the manifest weight of the evidence only when an opposite conclusion is clearly apparent. *Ameritech Services, Inc. v. Illinois Workers' Compensation Comm'n*, 389 Ill. App. 3d 191, 203, 904 N.E.2d 1122, 1133 (2009). "[A] reviewing court must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn, nor should a court substitute its judgment

for that of the Commission unless the Commission's findings are against the manifest weight of the evidence." *Sisbro*, 207 Ill. 2d at 206, 797 N.E.2d at 673.

¶ 29 In *Sisbro*, the employee twisted his ankle as he stepped out of a delivery truck and into a pothole while making a delivery. *Sisbro*, 207 Ill. 2d at 197-98, 797 N.E.2d at 668. The Commission awarded the employee workers' compensation benefits, finding a causal relationship between the work accident and the acute onset of a degenerative condition in his foot. On appeal, the supreme court affirmed the Commission's decision. *Sisbro*, 207 Ill. 2d at 215, 797 N.E.2d at 678. In its analysis, the supreme court stated: "It has long been recognized that, in preexisting condition cases, recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *Sisbro*, 207 Ill. 2d at 204-05, 797 N.E.2d at 672.

¶ 30 "Whether a claimant's disability is attributable solely to a degenerative process of the preexisting condition or to an aggravation or acceleration of a preexisting condition because of an accident is a factual determination to be decided by the \*\*\* Commission." *Sisbro*, 207 Ill. 2d at 205-06, 797 N.E.2d at 673. In deciding questions of fact, it is the function of the Commission to judge the credibility of the witnesses and resolve conflicting medical evidence. *Sisbro*, 207 Ill. 2d at 206-07, 797 N.E.2d at 673. A reviewing court must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn, nor should a court substitute its judgment for that of the Commission unless the Commis-

sion's findings are against the manifest weight of the evidence. *Sisbro*, 207 Ill. 2d at 206, 797 N.E.2d at 673. Even in cases where the facts are undisputed, the manifest-weight standard applies if more than one reasonable inference might be drawn from the established facts. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44, 509 N.E.2d 1005, 1008 (1987). The resolution of conflicts in medical opinions or testimony is within the province of the Commission and, again, its findings will not be disturbed unless contrary to the manifest weight of the evidence. *Sisbro*, 207 Ill. 2d at 206, 797 N.E.2d at 673. For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910, 851 N.E.2d 72, 77 (2006). Where the Commission's decision is supported by competent evidence, its finding of fact is not against the manifest weight of the evidence. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450, 440 N.E.2d 90, 93 (1992); *University of Illinois*, 365 Ill. App. 3d at 911-12, 851 N.E.2d at 77.

¶ 31 Claimant argues that there is no support in the record for the Commission's finding that claimant suffered a temporary aggravation of his left knee condition. As framed by claimant, the issue before us is not whether the Commission's analysis is contrary to law, but whether the Commission's fact determinations are against the manifest weight of the evidence. We turn to that evidence.

¶ 32 The Commission found claimant "established only a temporary aggravation, with Petitioner returning to baseline on February 14, 2008, the day Dr. Cole released him to unrestricted activity." The Commission noted claimant "acknowledged having a long history of left knee problems, including periodic 'flares' due to osteoarthritis, prior to the August 7, 2007,

accident." The Commission characterized claimant's work accident as "another such 'flare' that resolved following effective therapy." In support of its finding of a temporary aggravation, the Commission noted claimant (1) asked to return to full-duty work on September 10, 2007, after the accident on August 7, 2007; and (2) had "advanced osteoarthritis and obvious varus deformity of the left knee prior to the accident." Further, physicians opined before the work accident that claimant would require additional left knee surgery. A review of the record reveals ample evidence to support the Commission's decision.

¶ 33 The record shows claimant was diagnosed with "end stage" osteoarthritis of the left knee in 2002. Claimant sought treatment in the emergency room for intense left knee pain following arthritic flare-ups in 2005 and 2006. In 2005, Dr. Marquardt opined that claimant would eventually require knee replacement. The record shows that x-rays taken in March 2006 showed advanced osteoarthritis. Although Dr. Walsh recommended knee replacement surgery, claimant was adamant he did not want to have surgery and asked to return to full-duty work on September 10, 2007. Claimant sought treatment with Dr. Cole on October 15, 2007. Claimant reported constant and severe left knee pain since his work accident. Claimant had a recent cortisone injection but it did not provide pain relief as it had in 2005 and 2006. Dr. Cole stated an impression of "left knee significant varus alignment, medial compartment osteoarthritis, exacerbation of a pre-existing condition 8/20/2007" and prescribed a course of physical therapy. On November 19, 2007, Dr. Cole reported that claimant had made significant progress. On February 14, 2008, Dr. Cole's treatment note states:

"[Claimant] is seen today for reevaluation of his left knee. Overall,

he is doing very well at this time. We placed him in a physical therapy program in November of 2007. He has done very well and states the knee has made great improvement and he feels great at this time. He is tolerating the discomfort he has by taking Tylenol or Dapro pm. "

¶ 34 Upon physical examination, Dr. Cole reported claimant had no tenderness over the medial or lateral aspect of the knee and no effusion present. Dr. Cole cleared claimant "to continue to advance to all activities as tolerated restriction free," noting claimant understood and agreed.

¶ 35 We find that the record contains a sufficient evidentiary basis for the Commission's determination that the current condition of claimant's left knee is not causally related to the work accident of August 7, 2007. Based on the foregoing evidence, the Commission could have reasonably concluded that claimant was symptomatic prior to the August 7, 2007, work accident, that the work accident temporarily aggravated claimant's osteoarthritis, that the temporary aggravation resolved, and that claimant's ongoing symptoms of the left knee were attributable solely to his preexisting degenerative condition. Accordingly, we affirm the Commission's finding.

¶ 36 III. CONCLUSION

¶ 37 For the reasons stated, we affirm the circuit court's judgment confirming the Commission's decision.

¶ 38 Affirmed.

