2013 IL App (2d) 130050WC-U
No. 02-13-0050WC
Order filed December 17, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

ANTONIO JOHNSON, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Printpack, Inc., Appellee).	))))))))	Appeal from Circuit Court of Kane County No. 12MR276 Honorable David R. Ademann, Judge Presiding.

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 on June 17, 2009, and his current condition of ill-being was not against the manifest weight of the evidence.

¶ 2 On July 6, 2009, claimant, Antonio Johnson, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 through 30 (West 2008)), seeking benefits from the employer, Printpack, Inc., for injuries suffered to his low back on June 17, 2009. Following a hearing, the arbitrator found claimant proved he sustained injuries

arising out of and in the course of his employment with the employer on June 17, 2009. The arbitrator awarded claimant benefits, including "the reasonable related costs of the low back surgery prescribed by Dr. McNally."

¶ 3 The employer sought review of the arbitrator's decision before the Commission. In an order entered on May 17, 2012, the Commission reversed the arbitrator's causation finding, with one commissioner dissenting. Thereafter, claimant filed a petition seeking judicial review in the circuit court of Kane County and the circuit court confirmed the Commission's decision.

Claimant appeals, arguing the Commission erred in finding that his low back condition was not causally related to his work accident on June 17, 2009. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The following factual recitation is taken from the evidence presented at the arbitration hearing on January 7, 2011.

¶ 6 The 31-year-old claimant testified that he began work as a press assistant for the employer in approximately November 2008. Prior to working for the employer, claimant worked as an assistant helper on a laminator machine for Smurfit Stone. Claimant injured his low back on July 19, 2004, while working for Smurfit Stone. A magnetic resonance imaging (MRI) on August 24, 2004, revealed an extremely large herniated disc on the left side at L5-S1. Claimant sought treatment with neurosurgeon Dr. Ben Roitberg on October 11, 2004, with complaints of low back pain and left radicular pain following the work injury on July 19, 2004. Dr. Roitberg performed a left L5-S1 hemilaminotomy and discectomy on October 29, 2004. Following surgery, claimant experienced worsening pain. A January 2005 MRI revealed bulging and nerve root compression against the facet joint. On February 25, 2005, Dr. Roitberg performed a second left-sided laminectomy at L5-S1. On June 2, 2005, Dr. Roitberg noted claimant continued to experience "left side pain shooting and sharp from the lower back to the left foot," numbness,

and tingling. A July 19, 2005, MRI of the lumbar spine showed evidence of degenerative disc with retrolisthesis at L5-S1 and what appeared to be a small disc fragment.

¶ 7 At the request of Smurfit Stone, Dr. Edward Goldberg, an orthopaedic surgeon with Midwest Orthopaedics at Rush, evaluated claimant on August 1, 2005. Dr. Goldberg diagnosed claimant with degenerative disc with recurrent herniation at L5-S1. Dr. Goldberg wrote in his report that he felt claimant's prognosis for recovery was poor without additional surgery. Claimant was not at maximum medical improvement. Dr. Goldberg identified treatment options including additional surgery and a work capacity evaluation. Claimant did not wish to pursue additional surgery. Claimant completed a functional capacity examination (FCE) and began a work hardening program. Claimant completed work hardening on November 28, 2005, with permanent restrictions of 28 pounds occasional lifting, 33 pounds occasional carrying, and occasional bending and stooping. Dr. Roitberg released claimant from his care.

¶ 8 In a report dated January 23, 2006, Dr. Goldberg stated claimant was at maximum medical improvement. Claimant could not return to his former employment as an assistant helper on a laminator machine but could work within his restrictions. Claimant and Smurfit Stone entered into a settlement contract pursuant to which Smurfit Stone agreed to pay claimant $155,000 in full and complete settlement of all claims under the Act arising as a consequence of claimant's work-related injury on July 19, 2004. The settlement contract was approved by the Commission on June 1, 2006. Claimant did not return to work for Smurfit Stone.

¶ 9 The record shows claimant sought emergency treatment at Sherman Hospital on December 5, 2007, reporting an accident date of November 16, 2007. Claimant reported the onset of right leg and back pain two weeks earlier. X-rays showed mild disc space narrowing at L5-S1. Claimant was diagnosed with acute exacerbation right lower back pain with sciatica and prescribed pain medications, and advised to follow-up with his primary care physician, Dr. Todd

Gephart.

¶ 10 Claimant underwent a lumbar spine MRI on December 12, 2007, ordered by Dr. Gephart. The MRI revealed advanced osteoarthritic changes at L5/S1 with central/left paramedian disc herniation/osteophyte complex and compromised left lateral recess and left exiting neural foramen.

¶ 11 In a Sherman Hospital neurodiagnostics report, dated December 20, 2007, Dr. Wayne Gavino wrote claimant suffered chronic low back pain which had worsened after heavy lifting in November 2007. Dr. Gavino reported a normal electromyogram (EMG) and nerve conduction study of both lower extremities.

¶ 12 Claimant completed a medical history form required for employment with the instant employer on October 27, 2008. Claimant indicated on his medical history form that he had no back problems or back injury and had undergone no operations.

¶ 13 Claimant began work as a press assistant for the employer in approximately November 2008. Claimant assisted a machine operator in printing food and non-food packaging. Claimant testified that he worked between 40 and 64 hours per week, over the course of 5 to 7 days. His work required lifting 50 pounds, 4 to 8 times each day, and occasional bending and stooping.

¶ 14 On February 2, 2009, and February 3, 2009, claimant sought treatment at Provena St. Joseph Hospital emergency room. On February 2, 2009, claimant complained of right low back pain radiating to the right posterior buttock and thigh for three days. Claimant was diagnosed with right sciatica and advised he should not engage in bending, twisting, or lifting. Claimant was to follow up with his primary care physician.

¶ 15 On February 3, 2009, claimant complained of low back pain and numbness to the knee. Claimant reported a history of chronic low back pain with sciatica radiating to the legs

bilaterally. Claimant underwent a MRI revealing degenerative and postoperative findings at L5-S1 suggestive of large recurrent predominantly left paracentral disc protrusion. Claimant was diagnosed with back pain L5-S1 disc protrusion and prescribed pain medication.

¶ 16 Claimant followed up with Dr. Gephart on February 4, 2009. In his treatment note, Dr. Gephart wrote that claimant had experienced right low back pain going into the right leg with numbness and tingling for three days. According to Dr. Gephart, claimant had never experienced leg symptoms. Dr. Gephart removed claimant from work until February 16, 2009. Claimant testified that he did not have difficulty performing his job as a press assistant for the employer from February 16, 2009, through June 16, 2009.

¶ 17 On June 17, 2009, claimant attempted to remove a cylinder weighing between 250 and 400 pounds from a press machine. Claimant testified the cylinder was on rollers but would not move. He placed his right foot against a metal bar and "jerked it, kept jerking it, and *** finally popped it loose." Claimant testified he felt "a lot of pain in [his] lower back, and it was going down [his] right leg." Claimant reported the accident to the machine operator who advised claimant that he should not do any more heavy lifting for the remainder of the work day. Claimant completed his shift, working approximately six to eight hours following the accident. Claimant went home and applied Icy Hot on his low back and legs. Claimant testified that he continued to experience right leg and low back pain and reported his pain to the employer the following day, June 18, 2009. Claimant first testified that he sought treatment on June 18, 2009, but later confirmed that he continued to work until June 22, 2009, and then sought treatment at the direction of the employer.

¶ 18 Claimant reported his work accident to Dr. Warren Wollin, a doctor of osteopathy employed by Physicians Immediate Care. According to Dr. Wollin's June 22, 2009, treatment note, claimant advised Dr. Wollin that his pain had improved since the accident on June 17,

2009, and claimant denied any radiation down his lower extremities. Claimant underwent a L5-S1 discectomy in 2004, but reported no pain in his back or down his legs since 2004. Claimant rated his current pain level at 5/10 and advised Dr. Wollin that the pain "comes and goes." Dr. Wollin diagnosed a lumbar strain and recommended ice and Biofreeze as needed. Claimant was returned to work and completed his shift.

¶ 19 Claimant testified at the arbitration hearing that he continued to experience right leg and low back pain and returned to Physician's Immediate Care the following day, June 23, 2009. In his treatment note, Dr. Wollin noted claimant experienced "some spasm in the lower back" while driving to work. Claimant denied any radiation into the lower extremities. Dr. Wollin directed claimant to apply warmth, prescribed Biofreeze and Naproxen, and returned claimant to work. Claimant advised the employer that he could not work and sought treatment at Provena St. Joseph Hospital.

¶ 20 According to emergency room records dated June 23, 2009, claimant had experienced pain in his right low back that radiated into his right buttock for approximately three days. Claimant reported undergoing a discectomy at L5-S1 in 2004 and 2005, and according to the emergency room note, claimant advised he "always has lower back pain" but the pain had worsened over the past two days. Claimant was diagnosed with exacerbation of chronic lumbar back pain and sciatica, prescribed pain medication, and removed from work until June 26, 2009.

¶ 21 Claimant reported to work on June 25, 2009, and the employer advised claimant he had been fired because claimant made a material omission or falsification on the medical history form required for employment with the employer and dated October 27, 2008. Claimant indicated on his medical history form that he had no back problems or back injury and had undergone no operations.

¶ 22 On June 29, 2009, claimant sought treatment with Dr. Gephart, his primary care

physician. Claimant reported a work accident on June 17, 2009, with sudden onset of right low back pain and right leg pain. Dr. Gephart recommended a MRI of claimant's lumbar spine and removed claimant from work. The MRI revealed a moderate to large left paracentral disk extrusion at the L5-S1 level with significant encroachment upon the anterior left thecal sac, left nerve root and left neural foramen.

¶ 23 Upon referral by Dr. Gephart, claimant next sought treatment with Dr. Thomas McNally, an orthopaedic surgeon with Suburban Orthopaedics. Treatment notes dated October 8, 2009, state claimant moved a 400-500 pound cylinder while working on June 17, 2009, and "felt immediate stiffness in his low back and a shooting pain down his right leg." Claimant reported no back or lower extremity pain before the accident. Upon referral by Dr. McNally, claimant underwent an EMG/lower extremity nerve conduction study with neurologist Dr. Olga Brusil on November 23, 2009. Claimant reported pulling a 700 pound press on June 17, 2009, and experiencing immediate low back pain radiating down the right leg. Claimant continued to experience "severe pain, numbness, and weakness in this leg with intermittent tripping and falling." Following her examination, Dr. Brussel concluded the EMG/nerve conduction study of both lower extremities was abnormal, finding claimant had bilateral moderate degree radiculopathy at L5-S1, appearing to be acute on the right and subacute on the left.

¶ 24 Also upon referral by Dr. McNally, claimant underwent a computed tomography (CT) lumbar myelogram on December 21, 2009, performed by Dr. Jeffrey Chung. Dr. Chung formed the impression that claimant had mild central spinal stenosis L5-S1 secondary to disc protrusion and mild neural foraminal narrowing on the left aspect at L5-S1 secondary to posteriorly oriented osteophytic spurring. Upon his review of Dr. Chung's report, Dr. McNally noted additional findings not observed by Dr. Chung, including Dr. McNally's impression that claimant had significant right-sided narrowing.

¶ 25 Claimant returned to Dr. McNally on December 29, 2009, reporting worsening back pain that radiated down the back of both legs, right worse than left. Dr. McNally recommended claimant undergo a laminectomy and fusion. Dr. McNally opined that because claimant was asymptomatic on June 17, 2009, and not receiving treatment for his low back, the June 17, 2009, work accident "aggravated and accelerated the pre-existing previously asymptomatic degenerative lumbar spinal conditions and caused them to become symptomatic and require treatment."

¶ 26 On March 18, 2010, Dr. Steven Mather, a spine surgeon with M&M Orthopaedics, examined claimant at the request of the employer. In his report, Dr. Mather summarized the claimant's two low back surgeries and medical records. Dr. Mather did not agree that claimant was asymptomatic prior to his work accident on June 17, 2009, noting claimant "clearly had lower back and leg symptoms starting in December 2007 and as recent [as] February 2009, prior to his alleged incident of June 17, 2009." Specifically, Dr. Mather noted claimant sought treatment on December 5, 2007, at the Sherman Hospital emergency room, complaining of right leg radicular pain. Further, claimant sought treatment with Dr. Gephart on February 13, 2009. Dr. Gephart recorded a long history of low back pain radiating down claimant's legs, right more than left. As a result, Dr. Mather did not believe claimant's present condition was related to his work accident on June 17, 2009, but was a natural consequence of the disc herniation which occurred in 2004 and 2005.

¶ 27 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 June 17, 2009. The arbitrator awarded claimant benefits, including "the reasonable related costs of the low back surgery prescribed by Dr. McNally." The employer sought review of the arbitrator's decision before the Commission. In an order entered on May 17, 2012, a majority of the Commission

reversed the arbitrator's decision finding claimant failed to prove by a preponderance of the evidence that his current condition of ill-being is causally related to the work accident on June 17, 2009. The Commission observed that claimant "had a longstanding preexisting condition in his lumbar spine, a calcified disc at L5-S1 and additional demonstrable degenerative changes affecting both the left and right sides of the spinal canal at L5-S1 which was neither caused nor aggravated by the event on June 17, 2009." Further, the Commission noted claimant misstated his medical history when seeking employment with the employer. Specifically, claimant failed to disclose work restrictions that would not allow claimant to safely perform as a press assistant. Thereafter, claimant filed a petition seeking judicial review in the circuit court of Kane County and the circuit court confirmed the Commission's decision.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 On appeal, claimant argues the Commission erred in finding that his low back condition was not causally related to his work accident on June 17, 2009. The employer argues claimant did not sustain accidental injuries arising out of and in the course of his employment.

¶ 31 "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). " 'In the course of employment' refers to the time, place and circumstances surrounding the injury." *Sisbro,* 207 Ill. 2d at 203, 797 N.E.2d at 671. The employer did not file a cross-appeal as required by Supreme Court Rule 303(a)(3) (Ill. S. Ct. R. 303(a)(3) (eff. May 30, 2008)), and, therefore, the issue of "time, place, and circumstances surrounding the injury" is not properly before this court.

¶ 32 In a workers' compensation case, the claimant has the burden of proving, by a

preponderance of the evidence, some causal relation between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63, 541 N.E.2d 665, 669 (1989). Compensation may be awarded under the Act for a claimant's condition of ill-being even though the conditions of his or her employment do not constitute the sole, or even the principal, cause of injury. *Brady v. Louis Ruffolo & Sons Construction Co.*, 143 Ill. 2d 542, 548, 578 N.E.2d 921, 924 (1991); *Fierke v. Industrial Comm'n*, 309 Ill. App. 3d 1037, 1040, 723 N.E.2d 846, 849 (2000). In order to constitute an accidental injury within the meaning of the Act, the claimant need only show that some act or phase of the employment was a causative factor of the resulting injury. *Fierke*, 309 Ill. App. 3d at 1040, 723 N.E.2d at 849. The relevant question is whether the evidence supports an inference that the accident aggravated the condition or accelerated the processes that led to the claimant's current condition of ill-being. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 181-82, 457 N.E.2d 1222, 1226 (1983); *Freeman United Coal Mining Company v. Industrial Comm'n*, 318 Ill. App. 3d 170, 173-74, 741 N.E.2d 1144, 1147 (2001).

¶ 33 Whether a causal relationship exists between a claimant's employment and his injury is a question of fact to be resolved by the Commission. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244, 461 N.E.2d 954, 958 (1984). The Commission's determination on a question of fact will not be disturbed on review unless it is against the manifest weight of the evidence. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44, 509 N.E.2d 1005, 1008 (1987). For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291, 591 N.E.2d 894, 896 (1992).

¶ 34 In support of his argument that the Commission's no-causation finding is against the manifest weight of the evidence, claimant argues he experienced a significant trauma on June

17, 2009, followed by an immediate change in his low back condition. According to claimant, he experienced worsening pain following his work accident and, because the pain did not resolve, he could no longer meet the physical demands associated with his work as a press assistant. Although claimant admits he experienced low back pain radiating down the right leg before his work accident, he characterizes his right-sided treatment as minimal and insignificant. Finally, claimant argues his November 2009 EMG/nerve conduction study and December 2009 CT myelogram proved the presence of a right-sided radiculopathy.

¶ 35 Claimant essentially asks this court to reweigh the evidence that was presented and disregard the inferences drawn by the Commission. However, it was within the province of the Commission to judge the credibility of the witnesses, resolve conflicting testimony, and draw reasonable inferences from the evidence presented. See *Sisbro* 207 Ill. 2d at 207, 797 N.E.2d at 674; *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221,223-24 (1980).

¶ 36 In this case, the Commission found claimant's work accident did not cause his current condition of ill-being. This conclusion was predicated on the finding that claimant "had a longstanding preexisting condition in his lumbar spine, a calcified disc at L5-S1 and additional demonstrable degenerative changes affecting both the left and right sides of the spinal canal at L5-S1 which was neither caused nor aggravated by the event on June 17, 2009." Claimant sought medical treatment in December 2007 and February 2009, complaining of right-sided pain and both Drs. McNally and Mather acknowledged that claimant was a candidate for fusion surgery at L5-S1 prior to the accident of June 2009. Dr. Goldberg wrote in his August 2005 report that he felt claimant's prognosis for recovery was poor without additional surgery. The Commission concluded claimant's right-sided pain began as early as November 2007.

¶ 37 Claimant also argues that Dr. Mather's testimony was not credible because he first ignored the right-sided EMG findings and later opined that the EMG revealed diabetic findings

on the right, consistent with a diabetic neuropathy. However, the Commission found that "*[e]ven if* the EMG findings were not explained by diabetes, the right-sided leg and low back symptoms were not new after June 17, 2009[, and] Petitioner had right sided back symptoms going back to November 2007." (Emphasis added.) We defer to the Commission's findings pertaining to the credibility of testimony, the weight to place on testimony, and conflicting medical evidence.

¶ 38 In this case, the Commission accepted the causation opinions of Dr. Mather and rejected those of Dr. McNally. In so doing, the Commission resolved a conflict in medical evidence, as is its function. Dr. Mather did not believe claimant's present condition was related to his work accident on June 17, 2009, but was a natural consequence of the disc herniation which occurred in 2004 and 2005. As an opposite conclusion is not clearly evident, we cannot say that the Commission's determination on the issue of causation is against the manifest weight of the evidence.

¶ 39 Lastly, claimant argues the Commission's finding that claimant sustained an accident on June 17, 2009, is inconsistent as a matter of law with its no causation finding. To obtain compensation under the Act, an injured employee must show by a preponderance of the evidence that he suffered a disabling injury arising out of and in the course of his employment. *Sisbro,* 207 Ill. 2d at 203, 797 N.E.2d at 671. The phrase " in the course of " refers to the time, place, and circumstances under which the accident occurred. *Caterpillar,* 129 Ill. 2d at 57, 541 N.E.2d at 667. It is not enough, however, to simply show that an injury occurred during work hours or at the place of employment. The injury must also "arise out of " the employment. *Sisbro,* 207 Ill. 2d at 203, 797 N.E.2d at 671-72.

¶ 40 The "arising out of " component addresses the causal connection between a work-related injury and the employee's condition of ill-being. *Vogel v. Industrial Comm'n*, 354

Ill. App. 3d 780, 786, 821 N.E.2d 807, 812 (2005). An injury is said to "arise out of " one's employment if it "had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Sisbro*, 207 Ill. 2d at 203, 797 N.E.2d at 672.

¶ 41 Claimant incorrectly asserts that "[w]hen the Commission in the present case found that there was an accident arising out of Johnson's employment activities, it implicitly found that there was a causal connection between those activities and an injury." Here, the Commission *expressly* found no causal connection existed between the accident and claimant's condition of ill-being. Contrary to claimant's argument, the Commission's findings are not inconsistent.

¶ 42 III. CONCLUSION

¶ 43 For the reasons stated, we affirm the circuit court of Kane County confirming the Commission's decision.

¶ 44 Affirmed.