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2013 IL App (3d) 120448WC-U

Order filed May 29, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

DALE GROSS,	)	Appeal from the Circuit Court
	)	of the Twenty-First Judicial Circuit,
Appellant,	)	Kankakee County, Illinois,
	)	
v.	)	Appeal No. 3-12-0448WC
	)	Circuit No. 11-MR-468
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION <i>et al.</i> (Kankakee County	)	James B. Kinzer,
Sheriff's Department, Appellee).	)	Judge, Presiding.

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PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.  
Justices Hoffman, Hudson, Harris, and Stewart concurred in the judgment.

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**ORDER**

- ¶ 1 *Held:* The Commission's finding that the claimant failed to establish that his condition of ill-being is causally related to a work-related accident was not against the manifest weight of the evidence.
- ¶ 2 The claimant, Dale Gross, filed an application for adjustment of claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2008)) seeking benefits for a knee injury which he allegedly sustained while working for the respondent, the Kankakee County Sheriff's Department (employer). After conducting a hearing, an arbitrator found that the

claimant had failed to prove that he sustained an accidental injury arising out his employment. The arbitrator also found that the claimant had failed to prove a causal connection between a work-related injury and his condition of ill-being. Accordingly, the arbitrator denied benefits.

¶ 3 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission) which unanimously affirmed and adopted the arbitrator's decision.

¶ 4 The claimant sought judicial review of the Commission's decision in the circuit court of Kankakee County, which confirmed the Commission's decision. This appeal followed.

¶ 5 **FACTS**

¶ 6 The claimant worked as a sergeant in the Kankakee County Sheriff's Department. On June 10, 2009, he was assigned to the courthouse security division. His duties included ensuring the safety of everyone in the courthouse, making sure that the courthouse was secure, and managing the transfer of inmates from the prison into the courthouse. The claimant testified that, at approximately 1:53 p.m., he was working at the front courthouse door monitoring the x-ray machine and checking people into the courthouse when he looked at a security monitor and noticed that the back door of the courthouse had been propped open. According to the claimant, he had to secure the back door as quickly as he could and return to his post at the front of the courthouse to continue checking people in as they entered the building.

¶ 7 After making sure than no one was entering the courthouse from the front, he left his post to secure the back door. He descended four steps to the back door and secured it. The claimant testified that, because no one else was monitoring the front door, he had to get back to his post "before somebody came in." He turned around and ascended the same four steps two at a time,

skipping the first and third steps. He placed his left foot on the second step and then planted his right foot above the fourth and final step at the top of the stairs. While his right foot was planted, the claimant pivoted on his right leg to get around a wall that was directly in front of him. As he pivoted on his right leg, his right knee "popped." He then walked back to his post at the front of the courthouse and completed his shift.

¶ 8 On the following day, the claimant reported the accident to his supervisor, Commander Fairfield, and prepared a written report of the incident. The claimant completed three additional written reports of the incident during the next two days. Each report indicates that the claimant's right knee "popped" while he was going up steps. Two of the reports note that no hazardous conditions caused or contributed to the accident. Another report indicates that no condition contributed to the accident other than the claimant's going up the steps. Commander Fairfield directed the claimant to make an appointment with Riverside Corporate Health Services.

¶ 9 On June 15, 2009, the claimant was examined by Dr. Dean Shoucair at Riverside Corporate Health Services. The claimant complained of pain in his right knee radiating into his leg. He told Dr. Shoucair that he was walking up stairs and turned to his left when he felt a pop in his lateral right knee. Dr. Shoucair examined the claimant's leg and prescribed pain medication. The doctor's medical records reflect that claimant had tenderness in his lateral and medial collateral ligaments but had full range of motion of the right knee with normal stability. Dr. Shoucair's diagnosis was "sprain/strain " of the knee.

¶ 10 The claimant was reexamined at Riverside Corporate Health Services on June 29, 2009. By that time, his condition had improved. The medical records of that visit indicate that the claimant had full range of motion of the knee with normal stability, and no swelling or tenderness

was noted on physical examination. The claimant was discharged from Dr. Shoucair's care, released to work full duty, and told to return "only if needed."

¶ 11 The claimant testified that, after he was discharged from Dr. Shoucair's care, he continued to experience intermittent pain in his right knee. However, he was able to walk, and he continued to work full duty.

¶ 12 On August 11, 2009, the claimant saw his primary care physician, Dr. Dharam Anand. The claimant told Dr. Anand that his right knee was swollen and painful, that it felt like there was fluid in his knee, and that it was hard to stand or kneel on the knee. The claimant told Dr. Anand that these symptoms had been present for more than three months. Dr. Anand's medical record of this visit does not mention any work accident.

¶ 13 Dr. Anand had previously treated the claimant for problems with his right knee. On June 5, 2009, five days before the claimant's alleged work accident, the claimant complained of right knee pain and told Dr. Anand that he had trouble walking. He stated he felt like there was fluid in his knee. He told Dr. Anand that these symptoms had been present for more than one month. At that time, Dr. Anand diagnosed the claimant with infrapatellar bursitis.<sup>1</sup>

¶ 14 After examining the claimant's knee for a second time on August 11, 2009, Dr. Anand ordered an MRI of the knee. The MRI was performed on August 19, 2009. The MRI revealed

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<sup>1</sup> "Infrapatellar bursitis" is the inflammation of the infrapatellar bursa, which is located just below the kneecap. It is often called "clergyman's knee" due to its historical frequency among clergymen, who injured the bursa by kneeling on hard surfaces during prayer.

what appeared to be an "abnormal morphology of the root of the medial meniscus suggestive of a meniscal root tear." It also confirmed that the claimant had infrapatellar bursitis. After reviewing the MRI results, Dr. Anand referred the claimant to Dr. Carey Ellis at Oak Orthopedics.

¶ 15 The claimant was examined by Dr. Ellis on August 24, 2009. Dr. Ellis's medical record of that date contains the following notation:

"[o]n 6/10/09, [the claimant] was walking up a flight of stairs and when he reached the top of the stairs, he planted his right knee and pivoted to turn. At that point in time, [the claimant] states that he twisted his knee and felt a pop. Since then, he has had swelling.

He has had significant pain attempting to ascend the stairs."

The claimant underwent an X-ray of his right knee, which was negative. Dr. Ellis assessed the claimant with a right medial meniscal tear and referred him to Dr. Michael Corcoran for evaluation of a right knee scope with partial medial meniscectomy.

¶ 16 On August 31, 2009, the claimant was examined by Dr. Corcoran. Dr. Corcoran reviewed the MRI and X-ray. He noted the X-ray demonstrated moderate to severe degenerative changes in the claimant's right knee. Dr. Corcoran's medical record notes that, due to the claimant's "diffuse degenerative changes," the doctor gave the claimant "no indication that arthroscopy is really going to help him." Dr. Corcoran also noted that the claimant's diffuse degenerative changes might require him to have "future surgery including joint replacement." The claimant elected to proceed with arthroscopic knee surgery to repair his torn meniscus.

¶ 17 On October 2, 2009, Dr. Corcoran performed surgery on the claimant's knee. The doctor's operative report described the surgical procedure as "[r]ight knee arthroscopy, partial medial meniscectomy,<sup>2</sup> chondroplasty of the medial femoral condyle<sup>3</sup> as well as plica excision."<sup>4</sup> The preoperative and postoperative diagnoses were "right knee complex tear involving the posterior horn and body of the medial meniscus, grade 3 chondromalacia<sup>5</sup> noted at the medial femoral condyle, thickened plica." Dr. Corcoran's surgical report also stated, "[i]ncidentally, [the claimant] also had a prepatellar bursitis, which was noted prior to the surgery." Dr. Corcoran prescribed physical therapy.

¶ 18 On October 12, 2009, the claimant returned to Dr. Corcoran with swelling in the prepatellar bursa of his right knee. In his medical record of this visit, Dr. Corcoran noted that this was a recurrent condition that predated the claimant's surgery. Dr. Corcoran informed the claimant that he may have "chronic difficulty due to the degenerative changes seen in his knee," and he told the claimant to avoid deep knee bending. The doctor noted that the claimant opted to hold off doing anything for the prepatellar bursa.

¶ 19 Dr. Corcoran examined the claimant again on October 29, 2009. At that time, Dr. Corcoran noted that the claimant was doing "dramatically better." He noted that the claimant

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<sup>2</sup> A "meniscectomy" is the surgical removal of all or part of a torn meniscus.

<sup>3</sup> "Chondroplasty" is surgery of the cartilage. The medial condyle is one of the two projections on the lower extremity of femur.

<sup>4</sup> "Plica excision" is the surgical removal of knee plica, which are remnants of tissue left behind during embryonic development of the knee joint.

<sup>5</sup> "Chondromalacia patella" is damage to the cartilage under the kneecap.

was "pleased with the results" of the surgery and wanted to return to work. Dr. Corcoran told the claimant to perform a home exercise program and follow up with him on an as-needed basis. On November 2, 2009, the claimant returned to full-duty work.

¶ 20 During the arbitration hearing, the claimant testified that the stairs he was ascending at the time of his injury were in a normal condition, *i.e.*, they were not in disrepair and were free from all hazards. He also testified that he was not carrying anything at the time of the accident. The claimant stated that he was required to climb "numerous stairs" when performing his duties as a security officer at the courthouse because the courthouse has three stories but only one elevator. The claimant testified that he was required to make security checks in the various courtrooms and county offices located throughout the building and that he sometimes had to climb stairs in a hurry. (On those occasions, the claimant would sometimes "skip" stairs, *i.e.*, climb the stairs two at a time.) He estimated that he made "[e]asily 40 to 50 trips up and down [the courthouse] stairs" per day.

¶ 21 During his direct examination, the claimant admitted that he saw Dr. Anand on June 5, 2009, five days before the accident, complaining of pain in his right knee. However, he claimed that the symptoms he experienced after the June 10, 2009, work accident were different and more severe than the symptoms he experienced before the accident. When asked to compare the pre- and post-accident symptoms, the claimant stated "[r]eally there was no comparison. What happened on June 10th was way more painful than anything on June 5th." He also testified that although he was still able to walk and run on June 5th,<sup>6</sup> he was unable to put his body weight on his right leg after the June 10 accident. However, during cross-examination, the claimant

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<sup>6</sup> The claimant stated that he was "just concerned with the fluid" in his knee at that time.

conceded that he "could have" told Dr. Anand's assistant on June 5, 2009, that he was having trouble walking at that time. He also admitted that the fluid in his knee was still present on June 10, 2009.

¶ 22 The claimant testified that he still experiences popping in his knee, and he cannot bend his knee for long periods of time. Although he is able to jog, he does so less often since his work accident and surgery. On cross-examination, the claimant testified that he was working full duty and was able to perform all job duties required of him. He further testified that he had no medical appointments scheduled for his knee and was not taking any prescription medication for his knee as of the date of the arbitration hearing.

¶ 23 The claimant testified that he was off work from October 2, 2009, through November 2, 2009, and he was not paid temporary total disability (TTD) benefits during this period. He sought to recover TTD benefits for this one-month period.

¶ 24 The arbitrator found that the claimant had failed to prove that he sustained accidental injuries arising out of and in the course of his employment. The arbitrator acknowledged that the claimant testified that he had to traverse stairs often during his work day. However, the arbitrator stated that "a close look at [the] [c]laimant's claim reveals that he is not claiming that he was injured on the stairs, but rather after he had ascended the stairs and was walking back to his work station." Regardless, the arbitrator found that, whether the claim is viewed as involving the stairs or involving the claimant's subsequent walk back to his work station, the claimant's injuries did not arise out of his employment because "there [was] no increased risk to the claimant." If the claimant was injured while walking (*i.e.*, after he had finished ascending the stairs), he cannot recover because walking involves risks that are shared by the general public

and "[w]alking in a place of employment is not an increased risk to [the] [c]laimant associated with his employment." On the other hand, if the claimant was injured while climbing the stairs, he cannot recover because:

[the] [c]laimant \*\*\* offered no testimony or evidence that this staircase was not used by members of the general public. People climb public staircases and walk in public areas every day, and doing so is not particular to [the] [c]laimant's specific line of work. [The] [c]laimant was at no increased risk than that of the general public as he was completing this action in an area accessible to the public. There was no increased risk of falling incidental to [the] [c]laimant's employment or connected with [the] [c]laimant's job duties. Simply being in the place of employment does not make a claim compensable."

¶ 25 Moreover, the arbitrator found "insufficient evidence to support [the] [c]laimant's claim that it was necessary for him to hurry and thereby skip steps to perform his duties on that day thereby exposing him to a risk to which the general public is exposed but the employee is exposed to a greater degree."

¶ 26 Further, the arbitrator found it significant that the claimant was "treated for his right knee 5 days prior to his work accident, on which date he noted the was having 'trouble walking.' " The arbitrator found that this fact made the claimant's case similar to *Elliot v. Industrial Comm'n*, 153 Ill. App. 3d 328 (1987), in which this court denied benefits to the claimant for injuries caused by an idiopathic fall. The arbitrator concluded that, like *Elliot*, the claimant's case

"involve[d] a fall due to the personal medical condition of the claimant with no involvement or connection with the employment other than being on stairs at work at the time of the fall."

¶ 27 The arbitrator also found that the claimant "did not prove by a preponderance of the evidence that his right knee problems were caused by, aggravated by, or accelerated by the alleged June 10, 2009 accident." The arbitrator noted that, five days before the work accident, the claimant was treated for problems with his right knee, including pain, swelling, and difficulty walking. At that time, the claimant told Dr. Anand that these symptoms had existed for approximately one month. When the claimant returned to Dr. Anand for further treatment on August 11, 2009, (two months after the alleged work accident), he told Dr. Anand that it was hard for him to stand or kneel on his right knee and that these symptoms had existed for approximately three months. The claimant did not mention any work accident at that time. Moreover, during the arbitration hearing, the claimant testified that the fluid in his knee was still present on the date of the alleged work accident. The arbitrator found that the claimant had right knee problems that preexisted the alleged work accident and concluded that the claimant had failed to establish that the alleged accident was causally related to his continuing knee problems.

¶ 28 The claimant appealed the arbitrator's decision to the Commission, which unanimously affirmed and adopted the arbitrator's decision. The claimant sought judicial review of the Commission's decision in the circuit court of Kankakee County, which confirmed the Commission's decision. This appeal followed.

¶ 29 ANALYSIS

¶ 30 To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. *Land and Lakes Co. v. Industrial*

*Comm'n*, 359 Ill. App. 3d 582, 592 (2005). In resolving disputed issues of fact, including issues related to causation, it is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041 (1999). We will overturn the Commission's causation finding only when it is against the manifest weight of the evidence. A factual finding is against the manifest weight of the evidence if the opposite conclusion is "clearly apparent." *Swartz v. Illinois Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086 (2005). The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002). "A reviewing court will not reweigh the evidence, or reject reasonable inferences drawn from it by the Commission, simply because other reasonable inferences could have been drawn." *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006).

¶ 31 Applying these standards, we cannot say that the Commission's finding of no causation was against the manifest weight of the evidence. Five days before the June 10, 2009, work accident, the claimant was treated for pain and swelling in his right knee. At that time, the claimant complained of right knee pain and told Dr. Anand that he was having trouble walking and that he felt like there was fluid in his knee. He told Dr. Anand that these symptoms had been present for more than one month. On August 11, 2009, two months after the accident, the claimant told Dr. Anand that his right knee was swollen and painful, that it felt like there was fluid in his knee, and that it was hard to stand or kneel on the knee. The claimant told Dr. Anand

that these symptoms had been present for more than three months. Dr. Anand's medical record of this visit does not mention any work accident. This evidence strongly suggests that the claimant was suffering from the same knee condition and the same symptoms before and after the accident.

¶ 32 While the claimant acknowledges that he was diagnosed with infrapatellar bursitis in his right knee five days before the alleged work accident, he argues that the accident caused a torn meniscus, which was a new and unrelated injury. In support of this argument, the claimant points to his testimony that the symptoms he experienced after the accident were different and more severe than the symptoms he experienced before the accident. Specifically, he testified that he experienced far more pain after the accident, and that he was able to walk and run on June 5, 2009, but was unable even to put his body weight on his right leg after the June 10, 2009, accident. However, this testimony is contradicted by the medical records, which indicate that the claimant complained of similar symptoms before and after the accident. Moreover, during cross-examination, the claimant conceded that he might have told Dr. Anand's assistant on June 5, 2009, that he was having trouble walking at that time. In addition, the claimant's testimony that he was unable to put his body weight on his right leg after the accident was belied by the fact that he was able to walk back to his post at the front of the courthouse and complete his shift immediately after the accident. Accordingly, the arbitrator was not required to credit the claimant's testimony that his symptoms were different and more severe after the accident. It was reasonable for the arbitrator to give greater weight to the contrary statements that the claimant made to Dr. Anand during his treatment (before the claimant filed his claim).

¶ 33 The claimant also argues that Dr. Anand prescribed an MRI after the work accident (not five days before) because he suspected that the claimant had suffered a meniscal tear during the accident. Contrary to the claimant's suggestion, however, the medical records do not clearly indicate when Dr. Anand began to suspect a meniscal tear. Moreover, even if he began to suspect a meniscal tear only after the accident, it is not clear whether that suspicion was triggered by the accident or by the persistence of the symptoms the claimant began experiencing before the accident. Dr. Anand did not testify. Nor did the claimant present any medical opinion evidence suggesting that the meniscal tear was caused by the June 10, 2009, work accident or that his post-accident symptoms (and not his pre-accident symptoms) were consistent with a meniscal tear. Thus, the claimant's argument that the meniscal tear was caused by the June 10, 2009, accident is based on little more than speculation.

¶ 34 Finally, the claimant argues that he proved causation based upon a "chain of events." However, contrary to the claimant's argument, the chain of events before and after the accident supports the Commission's finding of no causation. As noted, the medical records suggest that the claimant experienced similar symptoms before and after the accident. Moreover, when the claimant was examined by Dr. Shoucair two weeks after the accident, the claimant had full range of motion of the knee with normal stability and without any swelling or tenderness. Accordingly, Dr. Shoucair discharged the claimant from his care, released him to work full duty, and told him to return "only if needed." Although the claimant testified that he continued to experience intermittent pain in his right knee thereafter, he was able to walk and he continued to work full duty. The claimant did not seek any additional treatment for his knee condition until approximately six weeks later, when he returned to Dr. Anand complaining of the same

symptoms he was experiencing before the accident. For all these reasons, the arbitrator's conclusion that the claimant failed to establish that his meniscal tear or his right knee symptoms were caused, aggravated, or accelerated by the June 10, 2009, work accident was not against the manifest weight of the evidence.

¶ 35 Because we affirm the Commission's finding of no causal connection, we do not need to address the Commission's finding that the claimant failed to prove an accidental injury arising out of his employment.

¶ 36 CONCLUSION

¶ 37 For the foregoing reasons, we affirm the judgment of the Kankakee County circuit court, which confirmed the Commission's decision.

¶ 38 Affirmed.