

2013 IL App (3d) 120570WC-U
No. 3-12-0570WC
Order filed May 31, 2013

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

KOMATSU AMERICA CORPORATION,)	Appeal from
Appellant,)	Circuit Court of
v.)	Fulton County,
THE ILLINOIS WORKERS' COMPENSATION)	No. 11MR161
COMMISSION <i>et al.</i> (Steve Haines, Appellee).)	
)	Honorable
)	Steven R. Bordner,
)	Judge, Presiding.

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

ORDER

- ¶ 1 *Held:* The Commission's (1) finding that claimant's current condition of ill-being is causally related to his work injury of December 1, 2007, was not against the manifest weight of the evidence; (2) award of temporary total disability benefits was not against the manifest weight of the evidence; and (3) award of prospective medical treatment was not against the manifest weight of the evidence.
- ¶ 2 On March 24, 2009, claimant, Steve Haines, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2008)), seeking benefits from the employer, Komatsu America Corporation, for injuries suffered to his left knee on December 1, 2007. Following a hearing, an arbitrator found claimant's current

condition of ill-being causally related to his work injury on December 1, 2007. The arbitrator awarded claimant temporary total disability (TTD) benefits of \$626.29 per week for 49 weeks, and prospective medical treatment, including a total knee arthroplasty. The employer filed a petition for review of the arbitrator's decision before the Illinois Workers' Compensation Commission (Commission). On review, a majority of the Commission affirmed and adopted the arbitrator's decision. Thereafter, the employer filed a petition seeking judicial review in the circuit court of Fulton County and the court confirmed the Commission's decision.

¶ 3 The employer appeals, arguing the Commission's (1) finding that claimant's current condition of ill-being is causally related to his work injury of December 1, 2007, was against the manifest weight of the evidence, (2) award of TTD benefits is against the manifest weight of the evidence, and (3) award of prospective medical treatment is against the manifest weight of the evidence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 The following factual recitation is taken from the evidence presented at the arbitration hearing on June 29, 2010. The parties stipulated that claimant suffered a left knee injury on December 1, 2007, that arose out of and in the course of his employment with the employer. The 49-year-old claimant testified he had been employed by the employer as a welder for approximately three years. Claimant assembled the frames of multi-story heavy equipment trucks. On December 1, 2007, claimant slipped while scaling the exterior of a truck, injuring his left knee. An x-ray of the knee on December 4, 2007, showed mild degenerative changes of the medial compartment. Following a magnetic resonance imaging (MRI) test on December 8, 2007, Arlene Burke, a doctor of osteopathy, diagnosed in part, mild degenerative joint disease, and Dr.

Steven Below, of Great Plains Orthopaedics, noted the MRI revealed in part, minimal degenerative changes.

¶ 6 Following a course of failed conservative management, Dr. Brett Barnhart performed arthroscopic surgery on January 29, 2008, including medial meniscectomy, medial femoral condyloplasty, and patellofemoral condyloplasty. Claimant experienced worsening pain and on February 1, 2008, Dr. Barnhart performed an arthroscopic evacuation and debridement of a hematoma in the left knee. Claimant underwent a course of physical therapy with Advanced Rehab & Sports Medicine Services (Advanced Rehab) and on April 2, 2008, wrote: "The pain in my left knee has improved and no swelling and I feel I'm ready to return to work full duty." Dr. Barnhart returned claimant to work without restrictions on April 4, 2008. Although Dr. Barnhart reported claimant was doing very well and essentially had no complaints, he noted claimant had significant cartilaginous damage and may have recurrence of his osteoarthritic pain over his lifetime, requiring a total knee replacement.

¶ 7 Claimant returned to full duty work as a welder for the employer on April 7, 2008. Claimant testified his knee was better than before surgery but he continued to experience pain. Claimant resigned his position on April 11, 2008, and began working from the boilermakers' union hall. Claimant recalled working for five different employers over the course of the following year, mostly building boilers for power plants. Claimant performed many varied tasks but similar to the tasks he performed for the employer, although less physical or strenuous. Claimant's left knee pain worsened as he worked. Claimant testified he last worked on approximately April 24, 2009. His knee became swollen and he could not walk. Claimant testified his left knee "just kept popping out all the time, it wouldn't stay together." Claimant returned to Dr.

Below on June 25, 2009, reporting burning pain, locking, popping, and swelling of the left knee. The medical notes indicate claimant had not worked for two months because he was laid off. Dr. Below referred claimant to Dr. Piero Capecci, a total joint surgeon. On July 22, 2009, Dr. Capecci recommended knee replacement surgery for claimant and restricted claimant to sedentary work only. Claimant testified he has not worked since Dr. Capecci limited him to sedentary work.

¶ 8 The employer requested claimant be examined by Dr. Douglas Nelson, a board certified orthopedic surgeon, on September 8, 2009. Dr. Nelson diagnosed claimant with end stage degenerative arthritis of the left knee, status post-arthroscopic meniscectomy. Dr. Nelson opined that claimant would have had degenerative joint disease in his left knee prior to December 1, 2007. Dr. Nelson agreed that claimant needs a knee replacement, however, he also opined that the need for the knee replacement is not causally connected to the accident of December 1, 2007. Dr. Nelson suggested that claimant's degenerative arthritis was temporarily aggravated by the meniscal tear as a result of the December 1, 2007, accident but, claimant had recovered from the aggravation as evidenced by his return to regular duty work for a year before seeking additional treatment for his knee. Dr. Nelson testified on direct examination that, because of claimant's degenerative joint disease, he would have needed a total knee replacement despite any work activities or trauma. Dr. Nelson did not believe that the injury of December 1, 2007, accelerated or aggravated his degenerative arthritis. Dr. Nelson testified that arthritis gets worse over time and that the worsening of arthritis is variable, in that, some people might get worse in six months to the extent that symptoms become unbearable, and in other people, it may take two to three years to reach that point. Dr. Nelson also noted that claimant was "a large gentleman,

which might have some slight impact." On cross-examination, Dr. Nelson noted that claimant told him that his symptoms got worse after he resigned his employment with the employer. On redirect examination, Dr. Nelson testified that based upon the preexisting degenerative condition of claimant's knee, he felt it was unlikely that claimant was completely asymptomatic prior to December 1, 2007.

¶ 9 Claimant testified at the arbitration hearing on June 29, 2010, that prior to his injury on December 1, 2007, he did not have knee pain.

¶ 10 Following the hearing, the arbitrator found claimant's current condition of ill-being causally related to his work injury of December 1, 2007, and awarded claimant TTD benefits from July 22, 2009 (the date Dr. Capecci recommended knee replacement surgery for claimant and restricted claimant to sedentary work), through June 29, 2010 (the date of the arbitration hearing). The arbitrator also awarded claimant prospective medical treatment, including a total knee arthroplasty. In support of his finding, the arbitrator noted the original injury was undisputed, and the employer provided for and paid all benefits and medical treatment for the original injury. Further, claimant testified that although his condition had improved following surgery, the pain in his knee had never completely resolved. Claimant continued to work, albeit for a different employer, following his release from care but his knee continued to swell and cause pain. Claimant testified that when the pain failed to resolve, he sought treatment with Dr. Below on June 25, 2009, at which time he was referred to Dr. Capecci who recommended a total knee arthroplasty.

¶ 11 The arbitrator found it significant that on April 4, 2008, Dr. Barnhart discussed with claimant the potential need for a total knee replacement based on claimant's complaints at

the time Dr. Barnhart saw him. The arbitrator found it improbable for Dr. Barnhart to mention the need for a total knee replacement on April 4, 2008, if claimant had complete resolution of his symptoms in his left knee as suggested by Dr. Nelson.

¶ 12 With regard to Dr. Nelson's testimony, the arbitrator stated:

"[T]he Arbitrator finds it significant that Dr. Nelson ***opined that if Petitioner continued to have symptoms and that if his pain never fully resolved following surgery, that the need for the total knee replacement may have been caused by either the original injury of December 1, 2007[,] or the surgery which was carried out on January 29, 2008. Specifically, Dr. Nelson opined that when performing a meniscectomy, part of the meniscus is removed from the knee. Dr. Nelson opined that the more meniscus that is removed from the knee, the more likely it is that that will hasten, aggravate, or accelerate degenerative joint disease and the need for ongoing medical treatment. Dr. Nelson noted that the operative report from Dr. Barnhart did not include information about how much of the meniscus was removed during the surgery of Petitioner."

The arbitrator concluded: "Based on all the evidence that is available to the Arbitrator, the Arbitrator finds that the need for the total knee replacement is causally related to the original injury of December 1, 2007."

¶ 13 The employer sought review of the arbitrator's decision before the Commission.

On review, a majority of the Commission affirmed and adopted the arbitrator's decision. The Commission also remanded the cause to the arbitrator pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980), for further proceedings and a determination of any further TTD or permanent disability benefits to which the claimant might be entitled.

¶ 14 The employer sought judicial review in the circuit court of Fulton County and the court confirmed the Commission's decision. This appeal followed.

¶ 15 II. ANALYSIS

¶ 16 The employer argues claimant failed to prove that his current condition of ill-being is causally related to his work injury of December 1, 2007. In support of this argument, the employer relies on Dr. Nelson's opinion that claimant's degenerative arthritis was only temporarily aggravated as a result of the December 1, 2007, accident, and claimant recovered from the aggravation as evidenced by his return to regular-duty work.

¶ 17 A prerequisite to the right to recover benefits under the Act is some causal relationship between the claimant's employment and the injury suffered. *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 470, 949 N.E.2d 1158, 1165 (2011). Compensation may be awarded under the Act even if the conditions of employment do not constitute the sole or principal cause of the claimant's injury. *Brady v. Louis Ruffolo & Sons Construction Co.*, 143 Ill. 2d 542, 548, 578 N.E.2d 921, 924 (1991). "[A] preexisting condition does not prevent recovery under the Act if that condition was aggravated or accelerated by the claimant's employment." *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36, 440 N.E.2d 861, 864 (1982).

¶ 18 The question of whether a claimant's disability is attributable to a degenerative

condition or, because of an accident, to an aggravation of a preexisting condition, is a question of fact to be decided by the Commission. *Caterpillar*, 92 Ill. 2d at 37, 440 N.E.2d at 864-65. In resolving questions of fact, it is the function of the Commission to judge the credibility of the witnesses and resolve conflicting medical evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221, 223 (1980). A factual finding by the Commission will not be set aside 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 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). If there is sufficient factual evidence in the record to support the Commission's determination, it will not be set aside on appeal. *Beattie v. Industrial Comm'n*, 276 Ill. App. 3d 446, 450, 657 N.E.2d 1196, 1199 (1995).

¶ 19 In this case, the parties stipulated that claimant suffered a left knee injury on December 1, 2007, that arose out of and in the course of his employment with the employer. Claimant underwent arthroscopic surgery on January 29, 2008, and a second arthroscopic procedure on February 1, 2008. Following surgery, claimant underwent a course of physical therapy. On April 2, 2008, claimant stated his left knee pain had improved and he felt ready to return to full-duty work. Dr. Barnhart returned claimant to work without restrictions on April 4, 2008, noting claimant had significant cartilaginous damage and may have recurrence of his osteoarthritic pain over his lifetime, requiring a total knee replacement.

¶ 20 Claimant testified he returned to full-duty work for the employer on April 7, 2008. His knee was better than before surgery but he continued to experience pain. Claimant testified

his left knee pain worsened as he worked over the following year. By June 2009, his knee was swollen and he could not walk. "[I]t just kept popping out all the time, it wouldn't stay together." Claimant sought treatment with Dr. Below on June 25, 2009, reporting burning pain, locking, popping, and swelling of the left knee. Dr. Below referred claimant to Dr. Capecci, who recommended knee replacement surgery and restricted claimant to sedentary work only.

¶ 21 In challenging the Commission's finding of a causal connection between the claimant's condition of ill-being and his work injury of December 1, 2007, the employer relies on the opinion of Dr. Nelson. Dr. Nelson agreed claimant needs a knee replacement but opined that the need for the knee replacement is not causally connected to the accident of December 1, 2007. Dr. Nelson attributed claimant's condition to end stage degenerative arthritis and felt it unlikely that claimant was completely asymptomatic prior to December 1, 2007. However, claimant testified that prior to his December 2007 injury, he did not have knee pain. Further, an x-ray of the knee on December 4, 2007, showed only mild degenerative changes of the medial compartment. Following claimant's MRI, Dr. Burke diagnosed in part, mild degenerative joint disease, and Dr. Below noted the MRI revealed in part, minimal degenerative changes.

¶ 22 In claiming that Dr. Nelson's opinion is more credible and more reliable, the employer essentially challenges the Commission's assessment of the evidence and the inferences drawn therefrom. However, it was the function of the Commission to judge the credibility of the witnesses, determine the weight to be given their testimony, and resolve conflicting medical evidence. *O'Dette*, 79 Ill. 2d at 253, 403 N.E.2d at 223.

¶ 23 The evidence sufficiently establishes that the work accident, combined with the degenerative arthritis, is responsible for claimant's inability to work and is a causative factor in

his present disabled condition. Accordingly, the Commission's decision is not contrary to the manifest weight of the evidence.

¶ 24 The employer also argues that the award of TTD benefits and prospective medical treatment is against the manifest weight of the evidence. As a threshold matter, we clarify that the Commission, by affirming and adopting the arbitrator's decision, awarded claimant TTD benefits of \$626.29 per week for 49 weeks, from July 22, 2009, through June 29, 2010; and prospective medical treatment, including a total knee arthroplasty. Further, the Commission remanded the cause to the arbitrator pursuant to *Thomas*, for further proceedings *and a determination of any further TTD* or permanent disability benefits to which the claimant might be entitled.

¶ 25 The employer's arguments regarding the award of TTD and prospective medical treatment are based upon the premise that the Commission's causation finding was erroneous. These contentions can be rejected without further analysis. See *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 436, 943 N.E.2d 153, 161 (2011).

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the circuit court of Fulton County which confirmed the Commission's decision, and remand the matter back to the Commission for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 28 Affirmed and remanded.