

2013 IL App (3d) 121047WC-U

Workers' Compensation  
Commission Division  
Filed December 17, 2013

No. 3-12-1047WC

**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  
THIRD JUDICIAL DISTRICT  
WORKERS' COMPENSATION COMMISSION DIVISION

---

OTTO BAUM COMPANY,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Tazewell County.
	)	
v.	)	
	)	No.12 MR 0034
	)	
DANIEL RICKARD and	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, <i>et al.</i> ,	)	Honorable
	)	Paul P. Gilfillan
Appellees.	)	Judge Presiding.

---

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

**ORDER**

¶ 1 *Held:* The judgment of the circuit court confirming the decision of the Workers' Compensation Commission that the claimant's left knee condition was causally related to a workplace accident was affirmed, where the Commission's decision was not against the manifest weight of the evidence.

¶ 2 Otto Baum Company (Otto Baum), appeals from the circuit court's order confirming the decision of the Illinois Workers' Compensation Commission (Commission), finding that the left knee condition of the claimant, Daniel Rickard, was causally related to an accident he sustained while employed by Otto Baum, and awarding him benefits under the Workers' Compensation Act (Act)(820 ILCS 305/1 *et seq.* (West 2006)). For the reasons that follow, we find that the Commission's decision was not contrary to the manifest weight of the evidence, and affirm the judgment of the circuit court.

¶ 3 This case arises out of three alleged work-related injuries sustained by the claimant from incidents on June 6, 2008, and June 19, 2008, while working for Otto Baum. Following the incident of June 6, 2008, the claimant filed two separate applications for adjustment of claim under the Act (820 ILCS 305/1 *et seq.* (West 2006)), alleging injuries to his left shoulder and left knee, respectively. The claimant sought, in relevant part, temporary total disability (TTD) benefits and payment of medical expenses. Thereafter, following the incident on June 19, 2008, the claimant filed an application for adjustment of claim for another injury to his left knee, seeking the same relief. The arbitrator consolidated all three actions, and following a hearing on May 24, 2010, awarded the claimant 1) TTD benefits in the amount of \$614.48 per week for 84 4/7 weeks; 2) medical expenses; and 3) prospective medical treatment for his left knee.

¶ 4 Otto Baum petitioned for review of the arbitrator's decision before the Commission. With regard to the injuries of June 6, 2008, the Commission reversed the decision of the arbitrator and vacated the award for prospective medical treatment, concluding that the claimant failed to prove an accident that arose out of and in the course of his employment. With regard to the incident of

June 19, 2008, however, the Commission affirmed the arbitrator's ruling, and awarded the claimant TTD benefits in the amount of \$614.48 per week for 75 4/7 weeks, plus medical expenses and prospective medical treatment under sections 8(a) and (b) of the Act. 820 ILCS 305/8(a), (b) (West 2008). Otto Baum brought this appeal, contending that the Commission erred in finding that the claimant's injury arose out of and in the course of his employment.

¶ 5 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on May 14, 2010. The claimant testified that he was a union laborer and had been employed with Otto Baum for about 18 years. About 9:30 a.m. on June 6, 2008, he was dismantling forms off a building structure or "box" at an outdoor job site in Canton. He was on top of the box attempting to pull a Simon form with a pry bar, when he felt a pop in his left shoulder. The claimant testified that he immediately reported the incident to his foreman, Fred Reeve, and then continued working. According to the claimant, as he continued moving the forms, he began experiencing increased soreness in his shoulder, so he began trying to slide or "kick" them along with his left leg. After a while, however, he began feeling joint pain in the inside of his left knee. He did not report the knee pain to his foreman at that time.

¶ 6 On June 7, 2008, the claimant awoke with pain in his shoulder and difficulty walking on his left knee. He proceeded to the emergency room at Pekin Hospital, where he was x-rayed, given Vicodin for pain, and released. The x-rays of the claimant's knee revealed no fracture, dislocation or destructive bone lesions, but did show a small, loose body within the knee and small joint effusion.

¶ 7 According to the claimant, he reported both his knee and shoulder injuries to his directional

No.3-12-1047-WC

supervisor the following Monday, June 9. He returned to work around June 11, 2008. The claimant testified that, although he had worked on the job in Canton since February 2008, and had worked another job for Otto Baum prior to that time, he had not sought any treatment for his left shoulder or knee prior to June 6, 2008.

¶ 8 On cross-examination, the claimant explained that he waited until the following Monday to report his knee injury to his supervisors because in construction they generally "don't report a whole lot." He admitted that, although he had knee pain the day after his injury, he had informed the staff at the Pekin Hospital emergency room that there was "no known injury". Additionally, he acknowledged that, according to the emergency room records, he had reported experiencing sporadic pain in his shoulder for the past two weeks. Last, the claimant admitted telling one of Otto Baum's insurance specialists, Marc Collins, that he did not know what happened to his knee. However, he explained that he thought Collins was referring to what was causing the pain itself, not how the injury was caused.

¶ 9 On June 9, 2008, the claimant saw Dr. Dru Hauter at Illinois Work Injury Resource Center (IWIRC). The claimant reported that on June 6, 2008, his left knee had started hurting and the following day he could hardly walk. He denied having any prior medical history as to the left knee, but described a past work accident in which he was electrocuted and suffered injuries to his back, clavicle, and left leg. After examining the claimant's left knee, Dr. Hauter diagnosed him with degenerative joint disease in both knees with a "likely flare - no causation to an injury." He recommended that the claimant be returned to sedentary duty with restrictions unrelated to work.

¶ 10 On June 19, 2008, the claimant was continuing work on the same project as June 6 and was

installing a drainage system. He testified that he was pulling on a piece of felt for the drain when his knee "popped" in the same area it had on June 6. The claimant stated that at that point he was in severe pain and could no longer walk. He immediately reported the incident to a supervisor, James Brown, who was working with him on the job. His co-workers then placed him in the bucket of a skidster and carried him to his truck. The claimant later drove to Pekin Hospital emergency room.

¶ 11 The claimant testified that when he arrived at Pekin, he reported that he had twisted his knee at work, heard a "pop" and could not put any weight on the knee. The hospital records noted that he had been seen on June 7 for a prior knee injury. The doctor bandaged the knee and ordered an MRI. The claimant was then discharged, given crutches and a knee immobilizer, and told to rest, ice and elevate the knee.

¶ 12 James Brown testified that on June 19, 2009, he was working as the leadsman on the project with the claimant. Brown stated that they were working at a steep angle in muddy conditions. After instructing the claimant to retrieve some fabric, Brown saw him slip and roll his leg, after which the claimant was bent over. Brown testified that he and other co-workers then helped the claimant to a location where he could sit down. According to Brown, the claimant was "definitely in pain" and could bear no weight on his left leg. The claimant had to be transported to his truck by co-workers, and then left the job site.

¶ 13 As required by his job as leadsman, Brown assisted in filling out an accident report for the claimant on June 20, 2008. The report stated that the claimant had been injured by "stepping on uneven ground" and "twisting his knee."

¶ 14 On cross-examination, Brown acknowledged that the claimant had been injured before. According to Brown, the claimant had been electrocuted and had fallen off of a truck, breaking his sternum. Brown stated that, at the time of the June 19 incident, the claimant was on light duty, and was "trying his best to do his job".

¶ 15 The claimant's MRI was taken on June 21, 2008, and disclosed extensive edema within the posterior intramuscular fascia with grade I injury of the medial gastrocnemius muscle; a Grade I or II MCL sprain with MCL bursitis; large degenerative tear of the medial meniscus with associated arthritis of the medial femoral tibial joint; arthritis of the patellofemoral joint and mild chondromalacia of the lateral patellofemoral joint; a small loose body; and mild infrapatellar tendonopathy with a signal abnormality.

¶ 16 On June 25, 2008, the claimant went to see Dr. Steven Clark from Pekin Orthopedic Center (POC). The claimant reported experiencing pain in his left knee on June 6, 2008, with no specific injury, then twisting his knee on June 19, re-aggravating the earlier injury. According to Dr. Clark, the claimant's MRI findings were consistent with inflammatory problems and degenerative arthritis. Dr. Clark noted that the claimant was still using a knee immobilizer and taking Vicodin and Relafen for his knee pain. He ordered weight-bearing x-rays of the claimant's knee and kept him off of work until he could be re-evaluated the following week.

¶ 17 On July 2, 2008, the claimant was again examined by Dr. Clark, who noted that the weight-bearing x-rays revealed medial joint narrowing in both knees, but much worse on the left. Dr. Clark also noted that the claimant had been off of work since June 19, and that he would be undergoing an evaluation with Dr. Donald Mitzelfelt, also from POC. Dr. Clark released the claimant to

restricted duty effective July 7, 2008, specifying no lifting of more than ten pounds, with no climbing or squatting, and limited walking. He advised the claimant to follow up in three weeks.

¶ 18 On July 29, 2008, the claimant saw Dr. Mitzelfelt, who noted complaints from the claimant of left knee and left shoulder pain. According to Dr. Mitzelfelt, the claimant described simultaneously twisting his left knee and injuring his left shoulder while pulling on a form at work. The claimant also reported a re-injury to his left knee on June 19, 2008, and that he had continued to experience left knee pain. Dr. Mitzelfelt recommended a left knee arthroscopy and debridement with a partial meniscectomy and excision of loose bodies. He kept the claimant on the same restrictions imposed by Dr. Clark until further notice.

¶ 19 On February 22, 2009, the claimant underwent an independent medical examination (IME) with Dr. Robert Martin at Otto Baum's request. Dr. Martin reviewed the claimant's prior subjective reports and medical history from both accidents. He noted that the x-rays taken on June 7 of the claimant's left shoulder and knee were negative. He also noted that the claimant was injured on June 19 "at work [when] he pulled a piece of felt and took a step to the left and his left knee popped and he could hardly walk." Dr. Martin examined the claimant and found him to be morbidly obese. He noted that, at the time of the examination, the claimant was complaining of left knee pain in the knee joint, under the knee cap, and behind the knee that was aggravated by walking, stair climbing, squatting, and kneeling. However, his examination of the claimant's knees revealed no swelling of either knee, slight tenderness over the medial and lateral left knee, good medial and lateral stability of both knees, and good strength throughout the lower extremities. Dr. Martin observed that, in 2003, Dr. Mitzelfelt performed an arthroscopy on the claimant's right knee for a torn meniscus, but

that the claimant denied any previous injuries to or problems with the left knee

¶ 20 Dr. Martin diagnosed the claimant with morbid obesity; extensive arthritis of the left knee; chondromalacia of the left knee patella; and degenerative tears of the medial and lateral meniscus of the left knee. According to Dr. Martin, none of these diagnoses were causally related to the claimant's work. He was also of the opinion that the claimant could work without restriction as to any work-related injury, but believed that he would probably require restrictions due to his non-occupational degenerative disease and degenerative torn medial meniscus of the left knee. Dr. Martin further stated that, in light of the claimant's obesity, it was not in the least surprising to him that the claimant would have degenerative disease in the knees with significant degenerative tearing of the medial meniscus of the left knee and some intrasubstance tearing of the lateral meniscus of the left knee. Dr. Martin went on to state that, in light of the "conflicting histories" the claimant gave "to the emergency room as compared to the history he gave to me today, it is very clear to me that his current symptoms have nothing whatsoever to do with his work and everything to do with his non-occupational degenerative problems."

¶ 21 On May 14, 2009, at the request of Otto Baum, Dr. Clark issued a report regarding the claimant's treatment. Dr. Clark gave the opinion that, based upon his limited contact with the claimant, the claimant was suffering from a left knee strain, and that the inflammatory and degenerative changes visible on the MRI pre-existed the twisting injury of June 19. Dr. Clark also believed that a complete recovery from a knee strain could be anticipated. He could not comment on the claimant's current condition or treatment.

¶ 22 On November 16, 2009, Dr. Mitzelfelt re-evaluated the claimant's knee and shoulder and

wrote a report. He stated that the claimant had continued pain and swelling and that his symptoms had continued to worsen. As to the claimant's left knee, the physical examination indicated pain along the medial aspect with an effusion and a positive McMurray sign. Standing x-rays taken that day disclosed mild to moderate medial joint narrowing. Dr. Mitzelfelt's assessment was of a "left knee status post work injury with a large medial meniscus tear and some evidence of mild to moderate arthritis." He gave the opinion that, though the claimant did have some arthritic changes present in the right knee as well as the left, "the associated injury would be, at the minimum, an exacerbating factor for the left knee meniscus tear and his present source of ill-being." He continued to recommend surgery for the condition.

¶ 23 The claimant testified that, since October 2, 2008, he had worked "very little", probably about two months in the past year. Most recently, he had found some flagging work in September of 2009, worked at another job in November 2009, and had last worked about 1 ½ weeks prior to trial for a construction company grading a gymnasium floor. He explained that this job involved moving a four or five-pound I-stick over the floor while the laser in the stick measures the floor grade. According to the claimant, he continues to suffer from a persistent, constant throbbing in his left knee that was not present before June 6, 2008.

¶ 24 In awarding the claimant benefits under the Act, the arbitrator specifically found that he and his witnesses were credible in their accounts of his injuries. In affirming the award with regard to the June 19, 2009, incident, the Commission noted that the claimant's testimony regarding the cause of the accident was corroborated by that of his supervisor, James Brown, the accident report dated June 20, 2008, and the history documented in Dr. Martin's report.

¶ 25 On appeal, Otto Baum challenges the finding that the claimant's June 19 knee injury was causally related to his employment. In support of its argument, Otto Baum points to various inconsistencies in the witness' testimony and conflicts in medical evidence that it believes cumulatively require reversal. We disagree.

¶ 26 In order to be compensable under the Act, an injury must both arise out of and be in the course of employment. *Brady v. Louis Ruffolo & Sons Const. Co.*, 143 Ill. 2d 542, 547-48, 578 N.E.2d 921, 923 (1991); *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill.App.3d 665, 674, 928 N.E.2d 474 (2009). "In the course of employment" refers to the time, place and circumstances surrounding the injury. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665 (2003). "Arising out of" employment refers to the causal connection between the injury and the employment, and is proven where the employee establishes that his injury originated with some risk inherent in the job itself. *Paganelis v. Industrial Comm'n*, 132 Ill.2d 468, 480, 548 N.E.2d 1033 (1989); *Hosteny*, 397 Ill. App. 3d at 676, 928 N.E.2d 474.

¶ 27 The question of whether an injury arose out of and in the course of employment is one of fact, and as such, is not subject to reversal by this court 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 (1987); *Certi-Serv, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244, 461 N.E.2d 954 (1984); *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill.App.3d 858, 868, 923 N.E.2d 870 (2010). For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent from the record on appeal. *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill.App.3d 297, 315, 901 N.E.2d 1066 (2009). The appropriate test is simply whether the record contains

No.3-12-1047-WC

sufficient evidence to support the Commission's determination. *R & D Thiel*, 398 Ill.App.3d at 866, 923 N.E.2d at 877. In deciding questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences therefrom. *Hosteny*, 397 Ill.App.3d at 674, 928 N.E.2d 474. Resolution of conflicts in medical testimony is also within the province of the Commission. *Sisbro*, 207 Ill.2d at 206.

¶ 28 The evidence in this case sufficiently established that the claimant injured his knee in an accident that occurred in the course of his employment. It was undisputed that, while installing a drainage system for Otto Baum, the claimant was pulling on some fabric when he suffered a sudden twisting or "rolling" injury to his left knee. Dr. Martin's report corroborates that the claimant experienced a sudden "pop" in his knee while pulling fabric for Otto Baum. Both the claimant and Brown testified that he could no longer walk at that point and had to be carried from the job site by co-workers. He then proceeded to the emergency room at Pekin Hospital where he was given crutches and a knee immobilizer. Undisputed evidence also showed that, after this incident, the claimant remained off of work completely for several weeks before Drs. Clark and Mitzelfelt released him to restricted duty. He was never cleared to return to work at full duty after the accident. These facts adequately prove the existence of an accident in the course of the claimant's employment.

¶ 29 Otto Baum also claims that there was insufficient evidence that the claimant's injury "arose out of" his duties that day. In support, Otto Baum relies primarily on the report of its own expert witness, Dr. Martin, that the claimant's present condition was unrelated to his work but instead caused by his "non-occupational degenerative problems" and his morbid obesity.

¶ 30 Again, this argument fails to constitute a basis for reversal. Contrary to the view of Dr. Martin, Dr. Mitzelfelt gave the opinion that the injury of June 19 was, at the very least, an "exacerbating factor for the left knee meniscus tear and [the claimant's] present source of ill-being." The facts surrounding the injury support this view. The record discloses no significant problem with the claimant's left knee prior to June 6, 2008. After he experienced some strain on that date, he returned to work by June 11, and was continuing to function reasonably in daily life until the injury at bar, when his condition deteriorated significantly and rapidly. It is well-settled that an accidental injury is compensable under the Act as long as it is *a* cause of the resulting ill-being, though not necessarily the sole cause. (Emphasis added.) *Sisbro*, 207 Ill. 2d at 205. Further, an employer takes its employee as it finds him, and the fact that a pre-existing condition renders that employee more vulnerable to injury will not bar recovery as long as it can be shown that the employment was also a causative factor. *Id.*

¶ 31 Here, even if the claimant did have a preexisting degenerative knee issue on June 19, the accident on that date certainly can be said to have aggravated his condition. Accordingly, his present state of ill-being did arise out of his employment.

¶ 32 Last, Otto Baum asserts that the Commission's finding of a compensable injury on June 19 was inconsistent with its refusal to award benefits following the June 6 incidents. We disagree.

¶ 33 As Otto Baum points out, the refusal to find causation from the earlier incidents was based upon a lack of credible evidence of any specific accident causing trauma to the claimant's knee or shoulder while he was on the job on June 6. Indeed, the Commission found no believable evidence that the claimant ever reported a knee injury on that date. Conversely, in the case before us, there

No.3-12-1047-WC

was no serious dispute that the claimant had suffered a debilitating injury while performing his job, and that this injury lead to his present state of ill-being. Accordingly, we are unable to conclude that the Commission's decision was contrary to the manifest weight of the evidence.

¶ 34 For the foregoing reasons, we affirm the judgment of the circuit court of Tazewell County which confirmed the decision of the Commission.

¶ 35 Affirmed.