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2013 IL App (4th) 120091WC-U

Order filed April 18, 2013

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

HELEN MARTIN,)	Appeal from the Circuit Court
)	of the Fifth Judicial Circuit,
Appellant,)	Coles County, Illinois
)	
v.)	Appeal No. 4-12-0091WC
)	Circuit No. 10-MR-159
)	
THE ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION <i>et al.</i> (Gary Klein,)	Mitchell K. Shick,
Appellee).)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* (1) The Commission's finding that the claimant failed to prove that she sustained an accidental injury arising out of and in the course of her employment was not contrary to law or against the manifest weight of the evidence; and (2) the Commission's finding that the claimant failed to establish that her condition of ill-being was causally related to a work-related accident was not against the manifest weight of the evidence.

¶ 2 The claimant, Helen Martin, filed an application for adjustment of claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 1992)) seeking benefits for

permanent injuries to her colon which she allegedly sustained while working for the respondent, Gary Klein (employer). After conducting a hearing, an arbitrator found that the claimant had failed to prove that she sustained an accidental injury arising out and in the course of her employment or that her condition of ill-being was causally related to a work-related accident. 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 Coles County, which confirmed the Commission's decision. This appeal followed.

¶ 5 **FACTS**

¶ 6 The claimant worked for the employer as an over-the-road truck driver. She and her son, Richard Martin, drove together as a team. On November 13, 1993, the claimant and her son were on the road in Oshkosh, Wisconsin, en route to California. Their truck was parked, and Richard was sleeping in the truck cab. The claimant testified that, while she was attempting to release a king pin to detach the trailer, the pry bar she was using slipped, and she was propelled backwards approximately 5 to 10 feet through the air. She landed in a sitting position on her buttocks on an asphalt surface. She did not strike her abdomen. According to the claimant, she realized that she was in a lot of pain as soon as she landed. The pain was in her abdominal and pelvic area. She thought that she had injured herself very badly. While attempting to crawl on her side, she called to Richard for help. After Richard helped her into the truck's sleeper, the claimant "balled up" in

a fetal position in an effort to control the pain, which she described as "excruciating." She remained in the sleeper while Richard drove the truck.

¶ 7 Richard testified that, on the date of the accident, he heard his mother pounding on the side of the truck crying in pain. According to Richard, she told him that she had hurt herself trying to release the fifth wheel. Richard finished unhooking the trailer, helped the claimant into the truck, and drove the truck away en route to their destination in California.

¶ 8 The claimant and Richard drove west without stopping for about 36 hours. After the claimant had spent approximately 24 hours in the sleeper, she tried to drive the truck to relieve Richard. Although she claimed she was still in a lot of pain, she was able to drive for a few hours until the pain became unbearable. At that point, she pulled over. The claimant testified that the next thing she remembered was waking up in the intensive care unit of IHC Evanston Regional Hospital in Evanston, Wyoming.

¶ 9 Richard testified that, when his mother relieved him and began driving the truck, he fell asleep for a few hours. The next thing he remembered was hearing his mother yell out that she was in pain. He awoke to find his mother passed out between the two seats of the truck. She was unconscious and "totally unresponsive." Richard carried the claimant back to the sleeper and laid her down there. He tried to rouse her by yelling at her and asking what was wrong, but she remained unresponsive.

¶ 10 The truck was parked on the side of the road somewhere in rural Wyoming at the time. Richard ran to a nearby convenience store and called 911. The 911 operator gave Richard directions to the nearest hospital, which was IHC Evanston Regional Hospital. Richard immediately drove his mother to the hospital, where she underwent emergency surgery, including

a colostomy. According to Richard, the claimant was unconscious when she went into the emergency room. The claimant testified that she was unconscious upon admission to the hospital and remained unconscious for three days thereafter.

¶ 11 The records of IHC Evanston Regional Hospital show that the claimant presented to the emergency room on November 15, 1993, at 2:45 a.m. She was examined by Dr. Gregory Yasuda, the attending physician. Dr. Yasuda's record of the examination noted that the claimant was alert and awake. According to Dr. Yasuda's records, the claimant told him that she felt awful and complained of abdominal pain. She reported that she had been experiencing diffuse pelvic pain for approximately two days. The pain gradually became more progressive, and the patient experienced a syncopal episode (*i.e.*, she fainted) on November 14, 2003. The hospital records indicate that the claimant had a family history of diverticular disease "in both her mother and sister who required emergen[cy] operations for perforated diverticulitis." The hospital records do not mention a fall.

¶ 12 Dr. Yasuda performed emergency surgery on the claimant. During the surgery, he discovered that the claimant had a perforated sigmoid diverticulitis¹ with gross peritonitis.² Dr. Yasuda removed a portion of the claimant's large intestine and performed a colostomy.

¹ A diverticulum is a small, bulging sac that pushes outward from the colon wall. When a diverticulum ruptures and infection sets in around it, the condition is called diverticulitis. The "sigmoid" is the lower colon, *i.e.*, the lower portion of the large bowel.

² "Peritonitis" is inflammation of the tissue layer of cells lining the inner wall of the abdomen and pelvis.

¶ 13 The claimant was discharged from the hospital on November 25, 1993. She received subsequent treatment in Las Vegas because she was living there with her sister. She also had treatment in Illinois, although she claimed that doctors in Illinois would not provide follow up care because the original procedure was done in Wyoming. In May 2004, she returned to IHC Evanston Hospital, where Dr. Yasuda performed a reversal of the colostomy. Dr. Yasuda's medical record of May 30, 1994, indicates that the claimant had a family history of diverticular disease. In February 1995, she underwent emergency intestinal surgery at Laramie Hospital in Wyoming.

¶ 14 The claimant did not return to work as a truck driver, except for a short period of time. She has been employed in several other jobs since her 1993 surgery.

¶ 15 During the arbitration hearing, the claimant denied reporting a family history of diverticular disease to Dr. Yasuda. She testified that she gave a history of a fall when she presented to IHC Evanston Regional Hospital on November 15, 1993. She stated that she had no problems or injuries prior to the November 13, 1993, work accident. Richard testified that the claimant had no injuries and had no problem with her bowels prior to 1993.

¶ 16 In support of her claim, the claimant presented the deposition testimony and expert report of Dr. Barry Fischer. Dr. Fischer is not a general surgeon, and he admitted that he had never performed the type of surgery that the claimant underwent. At the time of the arbitration hearing, Dr. Fischer's medical license was suspended due to unprofessional conduct. Dr. Fischer examined the claimant on January 14, 1999, and reviewed the claimant's medical records. He opined that there was a causal connection between the November 13, 1993, fall described by the claimant and her perforated colon, which necessitated emergency surgery two days later. Dr.

Fischer based this opinion largely on the temporal relationship between the fall and the onset of the claimant's symptoms. He also stressed that the claimant noted a "sharp" pain in her abdomen at the time of occurrence. Although Dr. Fischer conceded that the claimant did not suffer a blunt trauma to the abdomen, he opined that she experienced "increased infra-abdominal pressure as a result of the fall and the strain that was put upon her body." He concluded that this strain caused the claimant's perforated colon, which, in turn, caused her peritonitis and her need for surgery on November 15, 1993.³ Although Dr. Fischer testified that this type of causal mechanism was documented in the medical literature, he was unable to identify any authors or titles of papers supporting his causation opinion.

¶ 17 The employer presented the evidence deposition of Dr. Don Pruett, the employer's Section 12 examiner. Dr. Pruett is a board certified general surgeon who has practiced in St. Louis for more than 30 years. Dr. Pruett testified that, since he began his practice in 1965, he has seen one or two patients per month with perforated diverticulitis and peritonitis. Based on his experience as a general surgeon, Dr. Pruett opined that the fall that the claimant sustained on November 13, 1993, was not a causative factor in her perforated diverticulitis condition or her surgeries to treat that condition. He testified that diverticulitis is typically caused by a low-fiber diet, and he was not aware of any medical literature or studies suggesting that diverticulitis could be caused by a fall like the one described by the claimant. The doctor also testified that he could not think of any such causal connection based upon his clinical experience. Moreover, Dr. Pruett

³ Dr. Fischer also found a causal connection between the November 13, 1993, fall and the surgical reversal of the colonoscopy performed by Dr. Yasuda on June 2, 1994.

opined that the fact that the claimant's mother and sister had diverticulitis increased the claimant's risk of developing that disease.

¶ 18 The arbitrator found that the claimant's testimony established that she "suffered an accident" on November 13, 1993, while working for the employer. However, the arbitrator concluded that the claimant had failed to prove by a preponderance of credible evidence that she "sustained accidental injuries as a result of the *** fall" or that there is a "causal connection between the fall and her current condition of ill being of perforated diverticulitis and peritonitis that led to the surgery of November 15, 1993 and [her] subsequent disability." The arbitrator found Dr. Pruett's opinion to be "credible and convincing." She found it "much more persuasive" than Dr. Fischer's opinion, which the arbitrator found "not credible."

¶ 19 The arbitrator also found that the claimant's testimony was contradicted by the medical records and was "not credible." She noted that the medical records contain no mention of a fall, and none of the claimant's treating doctors related the claimant's colon condition to a fall. The arbitrator also observed that the claimant's testimony that she was unconscious when she arrived at the hospital on November 15, 1993, and for three days thereafter is contradicted by the hospital records which note that the claimant was awake and alert. In addition, the arbitrator found that the claimant's testimony that Dr. Pruett did not perform a physical examination when he saw her in 1995 was inconsistent with Dr. Pruett's report and his testimony.

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

¶ 22 Before addressing the issues raised by the claimant in this appeal, we note that the claimant failed to file a brief in compliance with Supreme Court Rule 342(a). That rule provides, in relevant part, that:

"[t]he appellant's brief shall include, as an appendix, *** a copy of the judgment appealed from" and "any opinion, memorandum, or findings of fact filed or entered by the trial judge or by any administrative agency or its officers. *** In addition, in cases involving proceedings to review orders of the Illinois Workers' Compensation Commission, the appellant's brief shall also include as part of the appendix copies of decisions of the arbitrator and the Commission." Ill. S. Ct. R. 342(a) (eff. Jan. 1, 2005).

The claimant failed to attach copies of the decisions of the circuit court, the Commission, and the arbitrator, in violation of Rule 342(a).⁴ This court may summarily dismiss an appeal for failure to comply with Rule 342. *Pecyna v. Industrial Comm'n of Illinois*, 149 Ill. App. 3d 97, 101 (1986). However, absent aggravating circumstances, a harsh construction of the Rule is to be avoided. *Id.* Because we find no such aggravating circumstances here, we will not dismiss the claimant's appeal. However, we admonish the claimant and all appellants to ensure that their briefs on appeal are in full compliance with Rule 342(a).

⁴ Helpfully, the employer attached copies of the Commission's decision and the arbitrator's decision to its appellee's brief. However, neither party attached a copy of the circuit court's judgment or opinion.

¶ 23 Turning to the merits, the claimant argues that the Commission's finding that she failed to prove that she sustained an accidental injury arising out of and in the course of her employment was contrary to law and against the manifest weight of the evidence. An accidental injury is compensable under the Act only if the injury "arises out of" and "in the course of" one's employment. 820 ILCS 305/2 (West 2004). It is the employee's burden to establish both of these elements by a preponderance of the evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). The determination of whether an injury arose out of and in the course of one's employment is generally a question of fact. *Id.* In resolving 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 from the evidence. *Id.*; see also *Ghere v. Industrial Comm'n*, 278 Ill. App. 3d 840, 847 (1996). We will not overturn the decision of the Commission regarding whether an injury arose out of and in the course of employment unless the Commission's decision is against the manifest weight of the evidence. *Hosteny*, 397 Ill. App. 3d at 674. A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Id.*; see also *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 539 (2007).

¶ 24 The claimant argues that the Commission's decision was contrary to law because her testimony regarding the accidental injury she received on November 13, 1993, was "unimpeached" and "undisputed" and was not rebutted by any of the evidence presented during the arbitration proceeding. We disagree. Although the claimant's testimony that she fell on November 13, 1993, while attempting to detach a trailer was undisputed, her claim that she suffered a compensable injury during that fall certainly was disputed. Dr. Pruett opined that the

fall was not a causative factor in the claimant's development of perforated diverticulitis or peritonitis. He testified that nothing in his clinical experience suggested that a fall like the one sustained by the claimant could have caused those medical conditions, and he was not aware of any medical literature or studies suggesting that diverticulitis could be caused by such a fall. Moreover, although the hospital's medical records contain a fairly comprehensive medical history, they contain no mention of a fall. This arguably suggests that, when the claimant presented to the hospital seeking treatment for her colon symptoms, she herself did not connect those symptoms to the fall.⁵ Thus, there was ample evidence supporting the Commission's conclusion that the claimant failed to prove an accidental injury. The Commission's conclusion is neither contrary to law nor against the manifest weight of the evidence.

¶ 25 The claimant also argues that the Commission's finding that she failed to establish that her perforated diverticulitis and peritonitis was causally related to a work-related accident was against the manifest weight of the evidence. We disagree.

¶ 26 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

⁵ Although the claimant testified that she mentioned the fall when she presented to the hospital on November 15, 1993, the Commission determined that the claimant's testimony was not credible. We do not find this determination to be against the manifest weight of the evidence, as several claims made by the claimant were contradicted by the medical records or by the testimony of other witnesses.

reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Hosteny*, 397 Ill. App. 3d at 675; *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).

¶ 27 Applying these standards, we cannot say that the Commission's finding of no causation was against the manifest weight of the evidence. As noted, Dr. Pruett opined that the fall was not a causative factor in the claimant's development of perforated diverticulitis or peritonitis. He testified that diverticulitis is typically caused by a low-fiber diet, and he was not aware of any medical literature or studies suggesting that diverticulitis could be caused by a fall like the one described by the claimant. The doctor also testified that he could not think of any such causal connection based upon his clinical experience. Moreover, Dr. Pruett opined that the fact that the claimant's mother and sister had diverticulitis increased the claimant's risk of developing that disease.

¶ 28 Although Dr. Fischer reached an opposite conclusion, the Commission was entitled to credit Dr. Pruett's opinion over that of Dr. Fischer. It is the Commission's province to assess the

credibility of witnesses and to resolve conflicts in the medical opinion evidence. *Hosteny*, 397 Ill. App. 3d at 675; *Fickas*, 308 Ill. App. 3d at 1041. Dr. Pruett is a board certified general surgeon who has practiced for more than 30 years. Since he began his practice in 1965, he has seen one or two patients per month with perforated diverticulitis and peritonitis. Dr. Pruett based his causation opinion on his experience as a general surgeon. By contrast, Dr. Fischer is not a general surgeon, and he admitted that he had never performed the type of colon surgery that the claimant underwent. At the time of the arbitration hearing, Dr. Fischer's medical license was suspended due to unprofessional conduct. Dr. Fischer based his causation opinion largely on the temporal relationship between the fall and the onset of the claimant's symptoms. Although Dr. Fischer testified that this type of causal mechanism was "documented" in the medical literature, he was unable to identify any authors or titles of papers supporting his causation opinion. Accordingly, the Commission's finding that Dr. Pruett's opinion was more credible than Dr. Fischer's opinion was not against the manifest weight of the evidence.

¶ 29 The claimant argues that Dr. Pruett's causation opinion is not credible because it is based on certain "false assumptions," such as the "assumption" that the claimant had a family history of diverticulitis and the assumption that the claimant began to feel better for a short period after the fall. The claimant asserts that these "assumptions" find no support in the record and are contradicted by the claimant's testimony. Contrary to the claimant's assertion, however, the hospital records of November 15, 1993, and May 30, 1994, both indicate that the claimant had a family history of diverticulitis. Moreover, the Commission was not required to credit the claimant's testimony on these matters. As noted, several aspects of the claimant's testimony were

contradicted by the medical records or by other testimony.⁶ Thus, the Commission's finding that the claimant's testimony was not credible was not against the manifest weight of the evidence. Finally, contrary to the claimant's argument, Dr. Pruett's causation opinion did not depend largely upon the assumption that the claimant got better or was able to drive for a certain number of hours after the accident.

¶ 30

CONCLUSION

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

¶ 32 Affirmed.

⁶ For example, the claimant testified that she mentioned the November 13, 1993, fall when she presented to the hospital two days later, but the hospital medical records do not reference a fall. In addition, the claimant testified that she was unconscious when she presented to the hospital and remained unconscious for three days, but the hospital records indicate that she was awake and alert at that time. Moreover, the claimant's testimony that Dr. Pruett did not examine her was contradicted by Dr. Pruett's report and testimony.