2013 IL App (4th) 120344-U

Workers' Compensation
Commission Division
Filed: July 8, 2013

No. 4-12-0344WC

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

LANDRETH LUMBER COMPANY,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Macoupin County
	)	
v.	)	
	)	No. 11 MR 30
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al*.,	)	
(Mauri Rose,	)	Honorable
	)	Kenneth R. Deihl,
Appellee).	)	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 Illinois Workers' Compensation Commission's finding, that the claimant's condition of ill-being is causally related to his workplace accident, is not against the manifest weight of the evidence.

¶ 2 Landreth Lumber Company (Landreth) appeals from an order of the circuit court of Macoupin County, which confirmed a decision of the Illinois Workers' Compensation Commission (Commission) awarding benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et*

seq. (West 2008)) to the claimant, Mauri Rose, for a back and neck injury he suffered while in Landreth's employ on June 1, 2007. On appeal, Landreth argues that the Commission erred in finding that the claimant's condition of ill-being is causally related to his workplace accident. For the reasons that follow, we affirm the judgment of the circuit court and remand the matter to the Commission pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 3 The following factual recitation is taken from the record on appeal, including the record of the arbitration hearing conducted on January 5, 2011.

¶ 4 The claimant testified that he began working for Landreth in 1982 and had a herniated disc in his lower back in the "early, mid-90's" but was able to return to full-duty work after his recovery. He testified that he had no problems with his neck prior to June 1, 2007. On that date, the claimant recalled, he was carrying a large window for Landreth when he tripped and fell on his back. The claimant said that he felt immediate pain in his back, left leg, and buttocks, as well as tingling in his left arm.

¶ 5 The claimant stated that he felt some pain in his neck at that time but was more worried about his back pain and arm tingling. He said that he complained of neck pain to his general practitioner, Dr. Guy Aton in 2007 and that an MRI of his cervical spine was ordered as a result. A June 19 report of that MRI states that the claimant suffered from central disc protrusions at C7-T1 and T2-3, as well as desiccation and posterior bulging of discs at multiple levels. In the clinical history it recites, the June 19 report notes the claimant's left arm tingling and numbness but makes no mention of any neck pain.

¶ 6 On June 15, the claimant attended physical therapy to "evaluate and treat" his "cervical,

thoracic, and lumbar spine." The report of that evaluation stated that the claimant suffered from pain in his low back, and left groin, leg, and buttock; numbness down his left arm; and tingling in his left foot. During the evaluation, the claimant had " 'popping and cracking' " with neck motion, but he denied pain or increased numbness with neck motion. However, the claimant did display or report shoulder pain and decreased left-leg strength. The report also noted "palpable tightness of [the claimant's] cervical and lumbar musculature."

¶ 7 The claimant first saw Dr. Scott Purvines, a neurosurgeon, on July 5, 2007. In paperwork the claimant completed prior to that visit, he reported pain located on his "back and lower left side" and did not mention his neck and arms. However, the claimant testified that he mentioned his arm problem to Dr. Purvines but that they agreed to focus on the claimant's low back, which was his main concern. On cross-examination, the claimant agreed that he did not list neck or arm pain among his complaints in paperwork filed with Dr. Purvines, but he insisted that he and Dr. Purvines discussed his other pain. Dr. Purvines's record of the July 5 visit discusses the claimant's lumbar spine problems and does not mention any problems with the cervical spine or upper extremities. To treat the claimant's lumbar spine problems, Dr. Purvines recommended conservative treatment.

¶ 8 On August 14, 2007, the claimant saw Dr. Thomas Brummet, who wrote that the claimant told him that, "at the time of his fall [and] injury, *** he had some tingling type sensations into his left arm" but "did not have any neck pain associated with this." An August 23, 2007, treatment note from Dr. Purvines indicates that the claimant continued to experience leg and low-back pain and that he planned to see a pain specialist. The August and September 2007 treatment notes from that pain specialist indicate that the claimant underwent epidural injections but continued to report low-back

pain.

¶ 9 In an October 4, 2007, treatment note, Dr. Purvines discussed the claimant's low-back problem and added that the claimant was reporting "weakness in his bilateral upper extremities." At an October 30 treatment visit, Dr. Purvines recommended an L5-S1 fusion, which he performed on November 26, 2007.

¶ 10 The claimant testified that his back pain worsened after the fusion surgery. Thus, the claimant testified, he continued to focus on his back pain after that procedure. He continued to treat with Dr. Purvines, whose notes of visits in January, February, and April 2008 indicated the claimant's continued reports of low-back and leg pain. These treatment notes make no mention of the claimant's neck or upper extremity problems.

¶ 11 The claimant underwent a series of epidural injections between May and October 2008 from Dr. William Thom, and Dr. Thom continued to provide him pain management treatment through November 2009. Dr. Thom's treatment notes focused exclusively on the claimant's lumbar spine condition and mentioned no problems with his cervical spine, neck, or shoulders before June 2009. In fact, the notes consistently stated that Dr. Thom observed that the claimant's cervical spine exhibited a full range of motion.

¶ 12 In an August 19, 2008, treatment note, Dr. Purvines wrote that the claimant had gotten no relief from a series of injections in his back. In a pain management form he filled out on October 3, 2008, the claimant indicated that he felt pain in his low back and legs, but he did not indicate that he had any neck, shoulder, or arm pain.

¶ 13 According to treatment notes, on October 14, 2008, the claimant told Dr. Purvines that he

had felt some relief from additional epidural injections to his lumbar spine. In a January 29, 2009, treatment note, Dr. Purvines noted that the claimant reported some progress on his low-back and lower-extremity pain after physical therapy, and the doctor wrote that he was considering using a stimulator to relieve the claimant's symptoms. By February 2009, Dr. Purvines recommended the stimulator. Dr. Thom likewise recommended a stimulator near the same time. Dr. Keith Wilkey examined the claimant at Landreth's request on April 1, 2009, and concluded that the claimant had sustained an exacerbation of a pre-existing low-back condition as a result of a workplace accident. Dr. Wilkey concurred with the claimant's treating physicians that the claimant should try a dorsal stimulator.

¶ 14 On May 14, 2009, in a questionnaire he completed for a new pain management physician, the claimant identified mid- and low-back pain, buttock pain, and leg pain, but he made no mention of neck, arm, or shoulder pain. However, in a June 11, 2009, treatment note, Dr. Thom wrote that the claimant reported "increasing arm pain over the past 3-4 months," a report that prompted Dr. Thom to request that the claimant "be sent back for evaluation of his right arm/neck in the near future."

¶ 15 On July 8, 2009, Dr. Thom implanted a dorsal stimulator in the claimant on a trial basis to mitigate his low-back symptoms. In a note regarding follow-up treatment eight days later, Dr. Thom wrote that the claimant reported relief from the stimulator. In a July 30 treatment note, Dr. Purvines wrote that the claimant reported improvement in his back and leg pain following the placement the trial stimulator, and Dr. Purvines recommended a permanent stimulator.

¶ 16 On August 21, 2009, the claimant underwent a procedure to have a permanent stimulator

implanted to address his low-back pain. In a November 5, 2009, treatment note, Dr. Thom wrote that the claimant reported low-back relief from the stimulator but "also describe[d] mid back and neck pain which was a part [of his] original injury and [the claimant] would like to address this." Dr. Thom wrote that, since the claimant was "essentially at maximal medial improvement for his low back and leg pain," "[i]t would be reasonable *** to turn [their] attention to his" neck and arm pain. Likewise, in his testimony, the claimant testified that the stimulator provided him some relief, so that he could turn his attention to the problems with his neck and arms. In his discussion of possible interventions for the claimant's neck problem, Dr. Thom wrote that he would consider epidural injections or RF ablation, and that, if those treatments provided relief, he would consider the claimant to have reached maximum medical improvement (MMI) with respect to his neck. After so stating, Dr. Thom wrote, "As degenerative arthritis is a chronic and often progressive pathology, recurrent pain after this period of time would be difficult to attribute solely to his work-related injury."

¶ 17 On December 8, 2009, Dr. Wilke examined the claimant at Landreth's request, and he concluded that the claimant had reached MMI with respect to his low-back condition and would be limited due to "multiple functional difficulties." Dr. Wilke acknowledged that the claimant also complained of cervical and thoracic problems, but he noted that he had "not been authorized to form an opinion" on those problems. In a February 9, 2010, letter responding to a request that he comment on the claimant's neck and thoracic condition, Dr. Wilke wrote that the claimant's MRI films revealed multi-level degenerative changes. Dr. Wilke diagnosed pre-exissting cervical osteoarthritis, as well as thoracic degenerative osteoarthritis with a clinically insignificant thoracic

disc bulge. Dr. Wilke opined that the claimant's cervical and thoracic spine conditions were exacerbated by his workplace injury but that such exacerbations "are usually self-limited to no more than 12 weeks." He further opined that the claimant had reached MMI with respect to his cervical and thoracic spine conditions, and he testified that he would not recommend any additional work restrictions as a result of those conditions.

¶ 18 The claimant testified that he saw Dr. Purvines on March 30, 2010, to address his neck problems. He said that he had experienced problems with his neck and arms since the day of his workplace accident, and that his problems had gotten worse, but that he had not addressed them out of his and Dr. Purvines's desires to focus on his back. Dr. Purvines's notes of the claimant's March 30, 2010, visit indicate that the claimant reported pain in his neck and upper extremities, as well as numbness and tingling. Dr. Purvines's note stated that he and the claimant "ha[d] never discussed [the claimant's] neck at any length before" that visit, but it reported the claimant's recollection that he "started to have this discomfort after his accident in 2007." After examining the claimant and reviewing the June 2007 MRI of the claimant's cervical spine, Dr. Purvines concluded that the MRI showed a "fresh-appearing" disc herniation at the C7-T1 level. Dr. Purvines noted that further imaging would help him develop a treatment plan.

¶ 19 In a June 17, 2010, letter, Dr. Wilke responded to Dr. Purvines's assessment by repeating his assertion that the claimant's cervical spine MRI showed degenerative changes; he wrote that he could not adopt Dr. Purvines's assessment of a "fresh" herniation without consulting a previous MRI for comparison. In his evidence deposition, Dr. Wilke reiterated the opinions contained in his written reports, and he added that, if the claimant suffered a C7-T1 spine injury, the claimant could have

experienced hand weakness but likely would not have experienced numbness.

¶ 20 In his evidence deposition, Dr. Purvines testified that, in the claimant's initial treatment visit, he diagnosed low-back problems and recommended a treatment plan. Dr. Purvines recalled that the claimant also reported weakness in his arms, but he said that the "greater issue was in the back at the time, so we put it on the back burner." In response to a question about the claimant's neck, Dr. Purvines stated that "it's really difficult to deal with both a neck and a back problem simultaneously, so [he] wasn't in the mode of looking for reasons to operate on [the claimant's] neck at that point." Dr. Purvines testified that he again noted potential problems with the claimant's cervical or thoracic spine just after the claimant's November 2007 fusion surgery, but he chose to continue to focus on the claimant's lower back problem. Regarding the claimant's neck problem, Dr. Purvines opined that the claimant's June 2007 cervical MRI revealed a "fresh" disc herniation that was causally related to his workplace accident, and was the likely cause of the claimant's arm and hand problems. Dr. Purvines also opined that further tests and treatment are necessary and that the claimant has not yet reached MMI with respect to his neck injury. On cross-examination, Dr. Purvines attributed the claimant's failure to report symptoms relating to his neck before March 2010 to a focus on his "significant" lumbar pain.

¶ 21 The claimant testified that his neck injury currently causes him frequent headaches, a loss of coordination in his arms and hands, appreciably decreased grip strength, and numbness in his fingers.

¶ 22 On January 25, 2011, following a hearing, the arbitrator found that the claimant's injury was compensable under the Act, and he awarded the claimant temporary total disability (TTD) benefits

of $550.09 per week for 26 4/7 weeks, as well as past and future medical expenses. In so ruling, the arbitrator found a causal relationship between the claimant's neck and cervical spine problems and his workplace accident. In so finding, the arbitrator noted that Dr. Purvines related the neck condition to the claimant's accident, and he found that opinion "to be more persuasive than those of [Landreth's] witness, who refused to look at the neck because he was not paid to do so." The arbitrator deemed credible the claimant's testimony that "his problems associated with his neck and both arms began shortly after [his workplace accident], as evidenced by the cervical MRI on 6/19/07." The arbitrator also found that the claimant's "initial focus was on his more significantly injured lower back, per Dr. Purvines."

¶ 23 Landreth sought review of the arbitrator's decision before the Commission. On August 19, 2011, the Commission affirmed and adopted the arbitrator's decision and remanded the cause to the arbitrator pursuant to *Thomas*, 78 Ill. 2d 327. Landreth filed a petition for review in the circuit court of Macoupin County, which issued an order confirming the Commission's decision on March 28, 2012. On April 12, 2012, Landreth filed a timely notice of appeal of the circuit court's decision.

¶ 24 On appeal, Landreth argues that the Commission erred in finding that the claimant's neck condition is causally related to his June 1, 2007, workplace accident. A prerequisite to the right to recover benefits under the Act is some causal relationship between the claimant's employment and the injury suffered. *Schwartz v. Industrial Comm'n*, 379 Ill. 139, 144-45, 39 N.E.2d 980 (1942). 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 (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 (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 (1992).

¶ 25 Landreth argues here that the Commission's finding, that the claimant's neck condition was causally related to his workplace accident, is against the manifest weight of the evidence for several reasons. First, he argues that the evidence does not support the claimant's position that he injured his neck at work, because Dr. Thom did not note neck pain until two years after the accident; Dr. Thom characterized the pain in November 2009 as "recurrent" rather than continuous; Dr. Brummett noted in August 2007 that the claimant mentioned no neck pain in connection with his arm problems; and the claimant's remaining medical records between 2007 and 2009, including questionnaires he completed, do not mention neck pain. Landreth further notes that the June 19 report of the MRI on his cervical spine states a history of left-arm problems and does not mention any neck pain. From this evidence, Landreth concludes that the claimant did not present any neck complaints to his doctors, and they did not treat any neck complaints, until two years after his workplace accident. However, the Commission reached the opposite finding based on the fact that the claimant underwent a cervical MRI in June 2007, as well as the claimant's and Dr. Purvines's testimony that they discussed but decided to ignore his neck problems until they were able to treat his more serious low-back condition.

¶ 26 On that point, Landreth challenges the credibility of both the claimant and Dr. Purvines. With regard to Dr. Purvines, Landreth asserts that his causation testimony was based on the faulty

premise that the claimant suffered constant, even increasing, neck pain since his accident. According to Landreth, the claimant's pain cannot have been continuous, because Dr. Thom described it as "recurrent" in a November 2009 treatment note. However, that same treatment note indicates that the claimant's neck pain came about at the time of the claimant's workplace injury and that the condition had gone untreated while the claimant focused on his low-back pain. That evidence, added to the claimant's testimony that his neck problems were constant after his injury, Dr. Purvines's testimony confirming that he and the claimant decided to put off treatment of his neck injury, and Dr. Purvines's opinion that the claimant's June 2007 cervical MRI revealed a "fresh-appearing" cervical herniation, is sufficient basis for the Commission's conclusion that Dr. Purvines's causation opinion is credible.

¶ 27 With regard to the claimant, Landreth asserts that his testimony is not credible because it contradicts his medical records. We disagree. The claimant testified that he had neck and arm symptoms immediately following his workplace accident, and continuously thereafter. Although his medical records for the next two years largely do not mention these symptoms, twice deny the symptoms, and once label them as "recurr[ing]" two years later, the Commission saw substantial other evidence that the claimant injured his neck as a result of his fall at work and suffered symptoms thereafter. This other evidence provides ample basis for the Commission's causation finding.

¶ 28 In one final attack on the Commission's finding, Landreth asserts that the opinions of its expert witness, Dr. Wilke, were much more persuasive than those of Dr. Purvines, and thus that the Commission should have credited Dr. Wilke's testimony instead of Dr. Purvines. Landreth points out Dr. Wilke's explanation that the claimant's arm pain complaints are not consistent with a C7-T1

herniation, as well as his opinion that the claimant's neck condition would have self-resolved shortly after his accident. However, Dr. Purvines had a contrary opinion, which was supported both by medical evidence (in the form of the June 2007 MRI) and by the claimant's testimony. It is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221 (1980). The Commission did just that in this case, and it determined that the claimant's theory of the case was more credible than Landreth's. Because the Commission's determination has support in the record, we cannot say that it is against the manifest weight of the evidence.

¶ 29 For the foregoing reasons, we affirm the judgment of the circuit court, which confirmed the Commission's decision, and remand the matter to the Commission pursuant to *Thomas*, 78 Ill. 2d 327.

¶ 30 Affirmed and remanded.