2013 IL App (4th) 121031WC-U

Workers' Compensation
Commission Division
Filed: September 25, 2013

No. 4-12-1031WC

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

ROBERT BOCKEWITZ,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Sangamon County
	)	
v.	)	
	)	No. 12 MR 163
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al*.,	)	
(Freeman United Coal,	)	Honorable
	)	John Schmidt
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 conditions of ill-being are not causally related to a workplace accident, are not against the manifest weight of the evidence.

¶ 2 The claimant, Robert Bockewitz, appeals from an order of the circuit court of Sangamon County confirming a decision of the Illinois Workers' Compensation Commission (Commission), which denied him benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*.

(West 2008)) for carpal tunnel, cervical spine, and left shoulder and biceps injuries he allegedly sustained or aggravated on August 27, 2007, while he was in the employ of Freeman United Coal (Freeman). For the reasons that follow, we affirm the circuit court's judgment and remand the cause to the arbitrator for further proceedings 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 evidence presented at the arbitration hearing conducted on April 4, 2011.

¶ 4 The claimant testified that he worked for Freeman for 31 years, until his last day of work on August 30, 2007. For the ten prior years, he had worked as an underground repairman, a job that required him to use hand tools, and occasionally vibrating tools, to repair and service equipment. Prior to his term as an underground repairman, the claimant worked as a belt repairman, a job that he said required essentially the same types of manual labor.

¶ 5 The claimant testified that, on August 27, 2007, he tripped while carrying some oil cans and tried to catch himself with his left arm on some nearby railing. He said that he fell anyway and that his head struck the ground. The claimant said that he felt immediate pain in his upper extremities, particularly on his left side. He recalled that he felt some neck pain, but that both the neck and shoulder pain worsened as time passed.

¶ 6 The claimant agreed that he had suffered neck injuries prior to his August 27, 2007, accident. He said that he had suffered workplace accidents in 1989 and 1994 and that he had been in an automobile accident in 1998. He agreed that one of his neck doctors had mentioned surgery as a possibility in February 1991 but that he did not undergo the surgery. A February 2001 CT of the

claimant's cervical spine revealed "3 mm central disc protrusions at the level[s] of C4/5 and C6/7." A report of a December 3, 2002, MRI of the claimant's cervical spine showed "a significant central and left sided disc herniation at C6-7 causing focal stenosis and likely involving the left sided nerve root." A contemporary treatment note from a physician treating the claimant's right-shoulder problem includes a statement the MRI revealed that "the cervical disc at C6-7 [had] progressed." The claimant said that he filed a workers' compensation claim for bulging discs in his neck and back related to his first workplace accident, and that he later settled that claim.

¶ 7 After the 1994 accident, the claimant's physician ordered a cervical MRI, which he reported in November 1994 revealed "a moderate central disc bulge at C6-7 with mild bilateral foraminal stenosis." The claimant testified that he settled his claim workers' compensation claim relating to the 1994 workplace accident.

¶ 8 The claimant testified that, following the 1998 automobile accident, he received a cortisone shot in his neck and underwent physical therapy, but he stated that his doctors had not recommended that he undergo surgery. The claimant further agreed that, in June 1998, he complained to his primary care physician that he was experiencing numbness in his left arm while driving; the claimant attributed this symptom to disc injuries in his neck. An August 14, 2008, MRI of the claimant's cervical spine revealed minor degenerative changes at C4-5, C5-6, and C6-7 but no central stenosis or foraminal narrowing. An August 25, 1998, examination conducted at Freeman's request indicated that the claimant reported widespread pain in his neck and arms but that the condition was responding to conservative treatment. The claimant testified that he was not undergoing any treatment for his neck as of August 27, 2007.

¶ 9 The claimant also agreed that he had been treated for carpal tunnel syndrome prior to his August 27, 2007, accident. He said that he filed a workers' compensation claim relating to his carpal tunnel condition on March 4, 1991. A nerve conduction study conducted that same day showed a mild carpal tunnel syndrome at the right wrist and a left greater than right C7 radiculopathy. The claimant testified that he settled a workers' compensation claim relating to his carpal tunnel condition and did not have corrective surgery. An August 1994 treatment note indicates that the claimant complained of pain in both of his wrists and hands, and an August 1994 EMG report noted findings consistent with mild bilateral median neuropathies at the wrists, "demyelinating in type." The report stated that the claimant's condition appeared to have worsened since the 1991 nerve conduction study.

¶ 10 On August 30, 2007, three days after the accident now at issue, the claimant sought treatment from his primary care physician, Dr. Pavinderpal Gill. In his treatment note for that visit, Dr. Gill wrote that the claimant complained of wrist and hand pain and worsening carpal tunnel syndrome. Dr. Gill recommended that the claimant undergo a nerve conduction study. In his testimony, the claimant agreed that he did not mention any neck problems to Dr. Gill, but he said that he did mention his left-shoulder pain. Neither complaint appears in Dr. Gill's treatment note.

¶ 11 The report of the claimant's September 4 nerve conduction study states findings "consistent with bilateral median neuropathies at the wrist." The report also suggests that the claimant's suddenly worsening hand and upper extremity symptoms might be attributable to "spinal stenosis and superimposed trauma." Following this report, Dr. Gill referred the claimant to Dr. Raj Sinha for treatment of his carpal tunnel condition and suggested a cervical MRI. The claimant underwent the

MRI on October 15, and it revealed degenerative disc disease at the C6-7 level.

¶ 12 A November 1 treatment note regarding the claimant's colonoscopy stated that the claimant reported no headaches. On November 9, Dr. Raj diagnosed bilateral carpal tunnel syndrome, left worse than right, and he recommended surgery. The claimant underwent a carpal tunnel release procedure for his left hand on December 18, and he underwent a procedure for his right hand on January 11, 2008. He testified that the procedures relieved his symptoms and that his hands now feel "pretty good," and post-operative treatment notes indicate the same.

¶ 13 In the meantime, on December 10, the claimant sought treatment for his neck with Dr. Stephen Pineda. In his report regarding that visit, Dr. Pineda noted the claimant's complaint of pain in the cervical spine radiating to the left arm, but he noted that, when "[he] roll[ed] [the claimant's] shoulder, he seem[ed] pretty comfortable." Dr. Pineda wrote that the claimant's condition was improving, and he recommended conservative treatment. In his testimony, the claimant stated that he told Dr. Pineda that he had problems with his neck and shoulder but that the doctor seemed to ignore his reference to the shoulder. The claimant said that Dr. Pineda never actually came into the treatment room to examine his neck or shoulder.

¶ 14 In June 2008, the claimant sought chiropractic treatment from Dr. Annette Gremmels, who treated his neck and left shoulder. Following her initial examination, Dr. Gremmels noted that the claimant complained of neck pain, radiating shoulder pain, and headaches, and she diagnosed a cervical sprain or strain, cervicobrachial syndrome, and brachial neuritis or radiculitis. The claimant visited Dr. Gremmels approximately two times per month through the time of his testimony. He testified that he felt some improvement as a result of Dr. Gremmels's treatment, as he noted

decreased headaches and increased mobility in his shoulder and neck.

¶ 15 In September 2009, Dr. Gill referred the claimant to Dr. Ronald Romanelli for further left-shoulder treatment. In a June 4, 2010, treatment note, Dr. Romanelli wrote that the claimant reported injuring his shoulder in a fall at work. Dr. Romanelli diagnosed an internal derangement of the left shoulder with a "rotator cuff tear versus a biceps tendon tear," and he administered cortisone injections and recommended an MRI. The report of that MRI, which was performed on June 9, identified no definite rotator cuff tendon tear but did note marked osteoarthritis, as well as tendinopathy that implicated the biceps. In a June 22 treatment note, Dr. Romanelli wrote that the claimant reported having consistent left-shoulder problems since his accident and that the claimant complained that doctors overlooked and failed to treat the problem. Dr. Romanelli diagnosed a bicipital tear with a possible disruption of the medial pulley, and he recommended a diagnostic arthroscopy and possible tenodesis and subacromial decompression.

¶ 16 The claimant had not undergone that procedure as of the time of his testimony, but he said that he wished to. He further testified that he continued to have problems with his shoulder, including decreased grip strength, pain, and an inability to do overhead work. He said that his neck was "a little tight" but had been "freed up pretty good" since his accident.

¶ 17 In his deposition, Dr. Gill opined that the types of work activities that the claimant testified he performed could cause or aggravate carpal tunnel syndrome. Dr. Gill stated that the claimant's August 27, 2007, fall could have aggravated his cervical spine condition, but he could not say whether the fall could aggravate a carpal tunnel condition. Dr. Gill acknowledged that Dr. Fortin's August 2007 tests revealed a demyelinated carpal tunnel condition, and he stated that demyelination

occurs over time and would not register on tests until four to six weeks after a triggering event. Dr. Gill testified that he did not note any shoulder complaints from the claimant until 2009, and, on cross-examination, Dr. Gill agreed that, following the claimant's August 30, 2007, visit, he ordered tests on the claimant's hands but none on the claimant's shoulder. Dr. Gill further agreed that, when he saw the claimant on August 30, 2007, he noticed no abrasions, wrist swelling, or other signs of trauma. Also on cross-examination, Dr. Gill agreed that the claimant received no treatment for his neck problem after December 2007 and raised no complaints about his neck after that date. (Dr. Gill did not have access to Dr. Grimmel's chiropractic records.) He also acknowledged on cross-examination that he was unaware of problems the claimant had had with his neck prior to 2007.

¶ 18 Dr. Romanelli testified in his deposition that the plaintiff's accident, as he described it, could have caused his left-shoulder condition and related arm pain. On cross-examination, Dr. Romanelli agreed that his causation opinion relied on the accuracy of the history the claimant gave him. He also explained that he diagnosed a tendon injury, not tendinopathy, because tendinopathy to the affected tendon is not isolated, as the claimant's tendon condition appeared to be.

¶ 19 Following the hearing, the arbitrator found that the claimant's alleged injuries are not compensable under the Act, because he failed to prove that they are causally related to his workplace accident. With regard to the claimant's carpal tunnel condition, the arbitrator based his finding on the fact that demyelination had been demonstrated prior to the claimant's accident, as well as evidence that any demyelination attributable to the August 27, 2007, accident would not have manifested by the time of the claimant's September 4 EMG. The arbitrator also noted that Dr. Gill declined to opine that the carpal tunnel condition could be related to the accident and that the

claimant had already received a settlement for similar complaints. With regard to the claimant's neck, the arbitrator relied on evidence that the claimant did not raise immediate complaints about his neck, as well as evidence that the claimant's neck condition preexisted his fall. With regard to the claimant's left shoulder, the arbitrator noted that the claimant's medical records did not mention any left-shoulder complaints until long after his workplace accident.

¶ 20 The claimant sought review of the arbitrator's decision before the Commission. In an order entered on February 3, 2012, the Commission unanimously affirmed and adopted the the arbitrator's decision and remanded the matter to the arbitrator pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 21 Thereafter, the claimant sought judicial review of the Commission's decision in the circuit court of Sangamon County. On October 12, 2012, the circuit court confirmed the Commission's decision, and this appeal followed.

¶ 22 On appeal, the claimant argues that the Commission erred in finding that his carpal tunnel, cervical spine, and left shoulder and biceps conditions are not causally related to his August 27, 2007, workplace accident. In a workers' compensation case, the claimant has the burden of proving, by a preponderance of the evidence, some causal relation between his employment and his injury. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63, 541 N.E.2d 665 (1989). Compensation may be awarded under the Act for a claimant's condition of ill-being even though the conditions of his or her employment do not constitute the sole, or even the principal, cause of injury. *Brady v. Louis Ruffolo & Sons Construction Co.*, 143 Ill. 2d 542, 548, 578 N.E.2d 921 (1991); *Fierke v. Industrial Comm'n*, 309 Ill. App. 3d 1037, 1040, 723 N.E.2d 846 (2000). In order to

constitute an accidental injury within the meaning of the Act, the claimant need only show that some act or phase of the employment was a causative factor of the resulting injury. *Fierke*, 309 Ill. App. 3d at 1040. The relevant question is whether the evidence supports an inference that the accidental injury aggravated the condition or accelerated the processes that led to the claimant's current condition of ill-being. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 181-82, 457 N.E.2d 1222 (1983); *Freeman United Coal Mining Company v. Industrial Comm'n*, 318 Ill. App. 3d 170, 173-74, 741 N.E.2d 1144 (2001).

¶ 23 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).

¶ 24 The claimant challenges the Commission's no-causation findings for all three of his claimed conditions of ill-being. To argue that the Commission's finding regarding his carpal tunnel condition is against the manifest weight of the evidence, the claimant relies on the fact that his physicians recommended and performed carpal tunnel release surgeries shortly after his fall, as well as the fact that he was not "under active medical treatment for the condition" at the time of his fall. However, even if this evidence might circumstantially support a finding that the claimant's fall exacerbated his carpal tunnel condition, there was evidence of at least equal strength to indicate there was no causal

connection. As the Commission observed, the claimant's physicians noted demyelination in his wrists long before his fall, and unrefuted medical testimony established that this preexisting demyelination, and not a new condition, was shown in the post-accident reports the claimant entered into evidence. Based on this evidence, along with the fact that the claimant offered no medical opinion to support a causation finding, we agree with the Commission's finding that the claimant failed to satisfy his burden to prove causation. Thus, the Commission's finding is not against the manifest weight of the evidence.

¶ 25 With regard to his cervical condition, the claimant notes that he was under no active medical treatment at the time of his accident, and he argues that the Commission offered no plausible explanation for his neck condition other than his preexisting injuries. That explanation, however, was sufficiently plausible to support the Commission's finding. Although Dr. Gill opined that the claimant's neck condition was related to his workplace fall, he agreed on cross-examination that he had not reviewed records of the claimant's previous medical records relating to his neck. As the Commission noted, those preexisting records indicated degenerative problems at the C6-7 level. The only medical evidence the claimant presented regarding his current neck condition was an October 15 MRI report, which noted the same degenerative changes at the C6-7 level and did not indicate exacerbation. Thus, aside from Dr. Gill's opinion, the claimant introduced no evidence to demonstrate that his neck condition had somehow changed since those MRI reports. As a result, again, we conclude that the Commission's finding is not against the manifest weight of the evidence.

¶ 26 Finally, with regard to his shoulder and biceps condition, the claimant notes that his account of his fall described an incident that could cause his condition, and he cites Dr. Romanelli's opinion

that his condition likely was caused by a single traumatic event. However, in finding no causal connection, the Commission noted the claimant's failure to seek treatment for his left shoulder in the months following his accident. The claimant counters that he made several complaints about limb pain during that time period that could be attributed to his shoulder problem and that the Commission could have found that he reported shoulder problems that his physicians overlooked. The claimant is correct that the Commission could have made these findings. However, it also could have determined that his testimony on those points was not credible, that he failed to seek treatment, and that the failure to seek treatment belies any causal link between his shoulder condition and his August 27, 2007, accident. The silence of his medical records regarding his shoulder injury provides ample support for the Commission's choice, which we conclude is not against the manifest weight of the evidence. We therefore affirm the circuit court's judgment confirming the Commission's decision and remand the matter pursuant to *Thomas*.

¶ 27 Affirmed.