2013 IL App (5th) 120452WC-U
No. 05-12-0452WC
Order filed September 18, 2013

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IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

ALAN HOLLIS,	)	Appeal from the Circuit Court
	)	of Jasper County.
Appellant,	)	
	)	
v.	)	No. 11-MR-15
	)	
WORKERS' COMPENSATION COMMISSION	)	
et al.,	)	Honorable
	)	Wm. Robin Todd,
(The City of Newton, Appellee).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: The decision of the Commission finding that claimant did not prove that his condition of ill being was causally related to his employment is not contrary to the manifest weight of the evidence.

¶ 2 Claimant, Alan Hollis, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2010)) alleging he sustained injuries to his

shoulders and head while in the employ of respondent, the City of Newton. The Illinois Workers' Compensation Commission (Commission) found that claimant failed to prove that his injuries were causally related to his employment and awarded no benefits. As that finding is not contrary to the manifest weight of the evidence, we affirm and remand.

¶ 3 The sole issue presented in this case is the propriety of the Commission's finding regarding causation. Causation presents a question of fact. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 293 (1992). Hence, we conduct review using the manifest-weight standard. *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910 (2006). In accordance with this standard, we will reverse only if an opposite conclusion is clearly apparent. *Mobil Oil Corp. v. Industrial Comm'n*, 327 Ill. App. 3d 778, 789 (2002). Resolving conflicts in the evidence, weighing the evidence, and assessing the credibility of witnesses are matters, in the first instance, for the Commission. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). Moreover, we owe substantial deference to the Commission in its evaluation of medical evidence due to its long-recognized expertise in this area. *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566 (1979).

¶ 4 Before the Commission, the burden is upon a claimant to show a causal connection between his injury and his job. See *Weers v. Industrial Comm'n*, 126 Ill. App. 3d 786, 788 (1984). This burden may be fulfilled in a number of ways. A claimant may present medical evidence to establish a connection between his injury and his work. See *International Vermiculite Co. v. Industrial Comm'n*, 77 Ill. 2d 1, 4 (1979) ("The opinions of both medical witnesses, that the claimant's injury might have aggravated his preexisting condition, easily satisfied the claimant's burden of proof."). Conversely, "[p]roof of prior good health and change immediately following and continuing after

an injury may establish that an impaired condition was due to the injury." *Waldorf Corp. v. Industrial Comm'n*, 303 Ill. App. 3d 477, 482 (1999).

¶ 5 Furthermore, it is well recognized that an injury need only be a cause–not the sole or primary cause–to be compensable under the Act. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Additionally, an employer takes an employee as he finds him. *St. Elizabeth's Hospital v. Workers' Compensation Comm'n*, 371 Ill. App. 3d 882, 888 (2007). Hence, where work aggravates a preexisting condition, recovery may be had. *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 36 (1982). As we have previously explained, "even though an employee has a preexisting condition that may make him or her more vulnerable to injury, recovery will not be denied where the employee can show that a work-related condition aggravated or accelerated the preexisting disease such that the employee's current condition of ill-being can be said to be causally related to conditions in the workplace and not merely the result of a normal degenerative process of the preexisting condition." *Bernardoni v. Industrial Comm'n*, 362 Ill. App. 3d 582, 596-97 (2005). With these standards in mind, we will now turn to the Commission's decision that claimant failed to prove causation.

¶ 6 In ruling against claimant, the Commission adopted the decision of the arbitrator, which provides as follows. The arbitrator first noted that claimant was employed by respondent as an electrical maintenance worker. Over the years, he has experienced a number of injuries to both shoulders, specifically, to his right shoulder on March 26, 1996, and to his left shoulder in December 1998 and January 2007. On March 3, 2010, claimant fell out of a bucket truck. He immediately felt pain in both shoulders as well as his hips and head. He treated with Dr. Lee (of the Bonutti Clinic),

who currently recommends rotator cuff surgery to both shoulders.

¶ 7 The arbitrator reviewed claimant's medical evidence. She noted that claimant was examined by his family physician (Dr. Saliba) five days after the accident. Claimant reported the accident to his doctor. He mentioned right-shoulder pain, but did not mention left-shoulder pain. An X ray of the right shoulder showed evidence of an earlier rotator cuff repair, degenerative changes, and "calcified granulomatous disease." A bone scan performed on June 10, 2010, showed only degenerative changes regarding claimant's shoulders. Claimant had been previously diagnosed with Paget's disease, which is a "generalized skeletal disease leading to a thickening and softening of the bones." Claimant then went to the Bonutti Orthopedic Clinic, where he had previously been a patient. Following a 1996 automobile accident, claimant underwent a rotator cuff repair to his right shoulder. In 1998, claimant "jammed" his left shoulder. An MRI showed a "full thickness tear," but claimant declined to have surgery at the time. When he went to the Bonutti Clinic following his March 2010 accident, he reported to Dr. Lee that he "fell from a bucket[,] 'hit head and R shoulder on tool bin, then landed on all four [*sic*].' " Lee diagnosed bilateral rotator cuff tears. Lee also stated, "I am concerned the [right] rotator cuff many not have completely healed after prior surgery of [*sic*] his muscles have never recovered from repair." The arbitrator then made the following finding:

> "[Claimant's] medical situation regarding his shoulders is complicated by the numerous injuries and medical history. The Arbitrator notes that there is no medical opinion in the exhibits offered by [claimant] that any doctor has expressed an opinion that the current shoulder problems for which surgery is sought were caused or aggravated by the incident of

March 3, 2010."

¶ 8 The arbitrator next recounted the medical evidence presented by respondent. A 1999 MRI by Dr. Wu showed "a full thickness tear of the left rotator cuff with no tendon retraction." Respondent also offered the evidence deposition of Dr. Richard Lehman, an orthopedic surgeon who is board certified in orthopedic surgery and sports medicine. Lehman reviewed claimant's MRIs and "indicated that there was no acute component to the tears, such as significant fluid in the shoulders or normal girth of the rotator cuff musculature." Lehman diagnosed "bilateral rotator cuff tears and atrophy of the rotator cuff musculature." He further opined that the March 2010 incident did not cause or aggravate claimant's rotator cuff tears. He acknowledged that the incident would have caused some soft-tissue pain, but that did not involve the rotator cuffs. Moreover, the atrophy of claimant's muscles and the retraction of the rotator cuffs could not have occurred in the three months between the incident and Lehman's examination of claimant. Finally, the soft-tissue injury would resolve without permanent effect.

¶ 9 The arbitrator then concluded:

> "Based on the preponderance of the evidence presented at arbitration, and particularly the unrebutted deposition testimony of Dr. Lehman, the Arbitrator finds that [claimant's] rotator cuff pathology is not causally connected to the claimed incident of March 3, 2010."

She then denied claimant's request for benefits under the Act. As noted above, the Commission adopted these findings and disposition. On administrative review, the circuit court of Jasper County confirmed the Commission's decision.

¶ 10 A review of the record reveals ample evidence to support the Commission's decision. In his

deposition, Lehman testified that he examined claimant on June 1, 2010. He had already reviewed claimant's medical records. Claimant related a history of the injury. He reviewed a 2010 MRI of claimant's shoulders. It showed "a rotator cuff tear with tendon retraction to the level of the glenoid and atrophy of the supraspinatus and infraspinatus." He also noted "full thickness tears of the supraspinatus and his infraspinatus and significant narrowing of the subacromial space." However, "there did not appear to be an acute component." Lehman diagnosed "bilateral rotator cuff tears and atrophy of the rotator cuff musculature." He then opined that these conditions were not caused by claimant's fall on March 3, 2010. Lehman stated that fall would have caused soft-tissue pain; however, the condition of his left shoulder was the same as it had been following claimant's 2007 accident. Lehman further explained that the tendon retraction and muscle atrophy would have taken more than three years to develop. Lehman acknowledged that following his examination, he authored a report stating, "I believe that 20% of his current problem with the left shoulder is directly attributable to the work related fall of 03/03/10." He explained that he was referring to the soft-tissue component of claimant's condition, which "was still resolving" at the time of the examination. This component, Lehman stated, would resolve, leaving the underlying, long-term problem with claimant's shoulder in place. Thus, Lehman's opinion provides strong support for the Commission's conclusion.

¶ 11 Claimant, nevertheless, attempts to avoid the effect of Lehman's testimony. He first points out that the mere fact that Lehman's opinion was the only medical opinion regarding causation did not require that the Commission accept it. See *Kraft General Foods v. Industrial Comm'n*, 287 Ill. App. 3d 526, 532 (1997). While true, we read nothing in the Commission's decision that indicated

that the Commission believed it was required to credit Lehman's testimony. Rather, it appears to us that the Commission evaluated Lehman's testimony and chose to accept it, which, as trier of fact, is its prerogative with any evidence. See *McRae v. Industrial Comm'n*, 285 Ill. App. 3d 448, 451 (1996). Claimant also states that Lehman's testimony had to be sufficient to support the Commission's decision. This is not an accurate statement of the law. Claimant bore the burden of proof. *Weers*, 126 Ill. App. 3d at 788. Therefore, even if the Commission decided to disregard Lehman's testimony in its entirety, claimant would still have to show a causal link between his condition of ill being and employment.

¶ 12 Claimant asserts that Lehman "failed to completely rule out rotator cuff exacerbation as contributing to the symptoms [he] experienced after the March 3, 2010 fall." Claimant points to a June 1, 2010 letter, in which Lehman wrote, "I do not believe that this need for surgery is related to this fall *as much as* it is related to his previous fall and degeneration." (Emphasis added.) Similarly, Lehman testified:

> "Again, as I stated before, I don't believe that the fall of March 2010 had exacerbated or changed his rotator cuff pathology, so I don't believe that there was permanency and I don't believe that the current complaints or the complaints that he had, when I saw him, were related to an exacerbation of his rotator cuff *as much as* the soft tissue component. So I don't believe there was any change in the rotator cuff from his fall, as I stated in my report." (Emphasis added.)

Claimant contends that Lehman's usage of the phrase "as much as" indicates that the fall could have been a cause, albeit a lesser cause than other events, of his condition. Of course, work need only be

a cause of an injury for a claimant to recover. *Sisbro, Inc.*, 207 Ill. 2d at 205. Nevertheless, claimant makes too much of Lehman's choice of words. In the latter case, the phrase appears in the very same sentence with "I don't believe that the fall of March 2010 had exacerbated or changed his rotator cuff pathology" and immediately before "I don't believe there was any change in the rotator cuff from his fall." Taking Lehman's testimony as a whole, claimant's argument is wholly unpersuasive.

¶ 13 Claimant also asserts that Lehman's testimony is "illogical and, in some respects, self-contradictory." Claimant points to statements made by Lehman in his letter dated June 1, 2010: (1) "I believe the fall of 03/03/10 is a factor in the left shoulder" and (2) "I believe that 20% of his current problem with the left shoulder is directly attributable to the work related fall of 03/03/10." Lehman later explained that the 20% component of which he was speaking involved soft-tissue issues, independent of the rotator cuff, that had not resolved at the time Lehman conducted his examination of claimant. The gloss claimant puts on Lehman's testimony is plausible, but only if one rejects Lehman's explanation that he was referring to a soft-tissue component of claimant's condition in his letter. If Lehman was speaking about a soft-tissue injury, then his testimony would not be "illogical" or "self-contradictory." Claimant states that Lehman's "attempts to step back from his initial opinion are disingenuous and cast doubt on his credibility." This assertion begs the question, as it assumes Lehman is abandoning an earlier opinion where it is plausible that the earlier opinion–taken as referencing a soft-tissue component–was not inconsistent with his later testimony. Furthermore, as claimant recognizes, this involves a matter of credibility. Such questions are primarily for the Commission. *O'Dette*, 79 Ill. 2d at 253. We perceive nothing in Lehman's opinion that is so flawed that the Commission was required to reject it.

¶ 14 Claimant points out that, in yet another letter, Lehman stated the soft-tissue component of claimant's shoulder condition "would have resolved in 4-6 weeks." Lehman's examination occurred more than six weeks after claimant's fall. However, Lehman also testified that 20% of claimant's problems at the time of the examination were due to a soft-tissue injury. The extent this undermines the validity of Lehman's opinion is a matter of the amount of weight to which it is entitled. See *Cassens Transport Co. v. Industrial Comm'n*, 262 Ill. App. 3d 324, 332 (1994) ("Although respondent challenges the bases for [Dr.] DeHaan's and [Dr.] Shapiro's opinions of causality, that goes to the weight to be accorded their testimony."). Like credibility, the weight to which evidence is entitled, and particularly medical evidence, is primarily an issue for the Commission. *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1042 (1999). This apparent discrepancy does not undermine Lehman's opinion to the degree that would allow us to find that the Commission's decision is contrary to the manifest weight of the evidence. We find similarly unavailing claimant's attempt to undermine Lehman's opinion as inconsistent to the extent Lehman diagnosed a zero-percent soft-tissue component to claimant's right-shoulder condition.

¶ 15 In sum, claimant does identify certain purported defects in Lehman's testimony and opinion. However, none are of the magnitude that would allow us to conclude that the Commission could not accept them. As such, Lehman's testimony provides strong support for the Commission's determination that claimant failed to prove a causal nexus between his employment with respondent and his condition of ill being.

¶ 16 Claimant also asserts that he presented evidence that showed his condition of ill being was related to the March 2010 at-work accident. Claimant correctly points out that there is no

requirement that he present medical evidence. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63 (1982). As noted, a chain of events demonstrating a prior condition of good health, a work-related accident, and a resulting injury may establish that an employee's condition is due to an injury. *Waldorf Corp.*, 303 Ill. App. 3d at 482. Pointing to his own testimony, claimant seeks to invoke this principle.

¶ 17 Claimant's argument encounters two obstacles. First, it is not clearly apparent that claimant's prior condition was one of good health relative to his shoulders. It is true that claimant had been asymptomatic for several years leading up to March 2010. Moreover, he had not undergone medical treatment or worked under medical restrictions since his 2007 accident. Had the Commission accepted this as proof of good health, we could not say that its determination was against the manifest weight of the evidence. However, countervailing evidence also existed. Notably, Lehman found tendon retraction and muscle atrophy that would have taken more than three years to develop, and a 1999 MRI showed a "full thickness tear of the left rotator cuff with no tendon retraction." In light of the fact that evidence exists in the record that indicates claimant's condition may not have been one of good health, we cannot say that the Commission was required to accept claimant's testimony and draw an inference that a causal connection existed based on the sequence of events surrounding claimant's March 2010 accident.

¶ 18 Second, even if claimant's testimony was not problematic in this respect, it merely created a conflict in the evidence with Lehman's testimony. Resolving such conflicts is primarily a matter for the Commission. *O'Dette*, 79 Ill. 2d at 253. The Commission, applying its expertise in medical matters (*Long*, 76 Ill. 2d at 566), resolved this conflict in respondent's favor. We cannot say that an

opposite conclusion is clearly apparent or, in turn, that this decision is contrary to the manifest weight of the evidence. *Mobil Oil Corp.*, 327 Ill. App. 3d at 789.

¶ 19 Before closing, we note that claimant criticizes the Commission's reasoning and contends that the Commission ignored evidence that he presented. Initially, we remind claimant that we review the result to which the Commission came rather than its reasoning. See *Department of Mental Health & Developmental Disabilities v. Civil Service Comm'n*, 103 Ill. App. 3d 954, 957 (1982). Hence, at this stage, claimant should be focused on showing how the evidence makes a conclusion opposite to the Commission's clearly apparent (see *Mobil Oil Corp.*, 327 Ill. App. 3d at 789) rather than attacking the underlying reasoning that produced the conclusion. Furthermore, we perceive no evidence that the Commission ignored claimant's evidence. Claimant points to the Commission's statement that Lehman's testimony was "unrebutted." However, as the trial court explained, the most plausible interpretation of this statement is that the Commission found claimant's evidence of insufficient weight to rebut Lehman's testimony.

¶ 20 In light of the foregoing, we affirm the decision of the trial court confirming the decision of the Commission. The Commission remanded this case in accordance with *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980), "for further proceedings for a determination of a further amount of temporary total compensation or compensation for permanent disability, if any." Though no benefits were awarded here and causation was not proven, we assume this remand concerns other aspects of claimant's condition (such as the soft-tissue injury) and, we remand as well.

¶ 21 Affirmed and remanded.