

No. 1-13-1396WC

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

SIEMENS BUILDING TECHNOLOGY,) Appeal from the Circuit Court
) of Cook County.
)
 Appellant,)
)
v.) Nos. 10 L 51066, 10 L 51068, 12 L 51341
)
ILLINOIS WORKERS' COMPENSATION)
COMMISSION, *et al.*,) Honorable
) Eileen O'Neill Burke,
(Bharti Desai, 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 Illinois Workers' Compensation Commission's decision awarding prospective medical benefits for the claimant was not against the manifest weight of the evidence.

¶ 2 The employer, Siemens Building Technology (Siemens), appeals the circuit court order which confirmed the decision of the Illinois Workers' Compensation Commission (Commission) awarding the claimant, Bharti Desai, prospective medical benefits under section 8(a) of the Workers' Compensation Act (Act) (820 ILCS 305/8(a) (West 2002)), after she sustained two head injuries during the course of her employment. For the following reasons, we affirm the circuit court's judgment.

¶ 3 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on November 20, 2008.

¶ 4 The claimant, a box assembler for Siemens, testified that, on June 6, 2002, she fell onto the concrete floor at work, striking her head and losing consciousness. She was transported by ambulance to Northwest Community Hospital, where x-rays and a CT scan of her head and spine were taken. The x-rays and CT scan were normal. The claimant was treated with anti-inflammatory pain medications and released from the emergency room with instructions to follow-up with her primary care physician.

¶ 5 On June 11, 2002, the claimant saw her family physician, Dr. Robert Hughes, who noted that she reported headaches and pain in the lower back, left elbow, left knee, and right ankle after the fall at work.

¶ 6 On June 24, 2002, Dr. Hughes diagnosed the claimant with post-concussion syndrome, prescribed pain medication, and referred her to: Dr. Nabeela Nasir, a neurologist, for her headaches; Dr. Ho Min Lim, an orthopedic surgeon, for her knee pain; and, Dr. David L. Spencer, another orthopedic surgeon, for her back pain. The claimant further testified that Dr. Hughes ordered her off from work.

¶ 7 On June 27, 2002, the claimant saw Dr. Spencer, who on July 2, 2002, ordered her off of work. On July 10, 2002, the claimant saw Dr. Lim, and, on his recommendation, she underwent an MRI of her left knee on July 22, 2002, which showed a prolapsed of the interior horn of the medial meniscus and chondromalacia of the medial femoral condyle, and an MRI of her lumbar spine on August 22, 2002, which was normal.

¶ 8 On August 5, 2002, the claimant saw Dr. Nasir, reporting headache, lower back and neck pain, and memory loss. Dr. Nasir opined that the claimant's headaches were the result of a concussion and muscle spasm in her neck and shoulders secondary to her fall, and she recommended physical therapy.

¶ 9 On August 13, 2002, at the request of Siemens, the claimant was examined by Dr. Paul D. Belich, who diagnosed her with a lumbosacral strain, a contusion of the left knee with a possible medial meniscus tear, and a contusion of the left elbow. Dr. Belich opined that these conditions were caused by the claimant's accident on June 6, 2002. He also expressed concern that the claimant was developing a chronic pain pattern which would make returning to work difficult. Dr. Belich recommended physical therapy and stated that the claimant was unable to return to work at the time of the visit.

¶ 10 On August 20, 2002, the claimant returned to work, but continued to seek treatment for her pain.

¶ 11 On September 16, 2002, Dr. Lim diagnosed the claimant with lumbar pain syndrome, with an overlay of emotional issues. On that same day, upon Dr. Hughes's referral, the claimant saw Dr. Steven Mardjetko, an orthopedist, who also diagnosed the claimant with lumbar pain syndrome.

¶ 12 Between October 1, 2002, and November 8, 2002, the claimant underwent physical therapy treatments at Concentra Medical Center, which resulted in limited improvement in her pain. On November 20, 2002, the claimant was again examined by Dr. Lim, who noted “very little improvement” in her knee pain.

¶ 13 On January 7, 2003, at the request of Siemens, the claimant was examined a second time by Dr. Belich, who opined that she had reached maximum medical improvement (MMI). However, Dr. Belich recommended that the claimant undergo a psychological evaluation because he believed that “the psychological components of her problems are quite frankly influencing very strongly the somatic subject[ive] complaints that she has.”

¶ 14 The claimant testified that, on March 13, 2003, she struck her head on the cement floor at work after the chair that she was sitting on broke. She stated that she “blacked out” and was taken by ambulance to Northwest Community Hospital where she was examined by Dr. Richard Broderick. Dr. Broderick noted that the claimant had been “unresponsive” during the ambulance ride to the hospital, spoke hesitantly and slowly to him, and was unable to tell him where she was, or state the correct year. He admitted the claimant for observation and referred her to a neurologist in the event her mental status did not stabilize. The claimant was released from the hospital on March 15, 2003.

¶ 15 On March 18 and 22, 2003, the claimant saw her new family physician, Dr. Inder Singh, who documented her history of workplace accidents and significant degree of generalized pains. Dr. Singh recommended that she remain off work and referred her to Dr. T. J. Fahey, an orthopedic surgeon.

¶ 16 On April 8, 2003, at the request of Siemens, the claimant was examined a third time by Dr. Belich, who diagnosed the claimant with a lumbosacral strain and opined that it was caused

by the workplace accident of March 13, 2003. Dr. Belich recommended physical therapy and a neurological evaluation for the claimant's complaints of dizziness.

¶ 17 On April 18, 2003, the claimant saw Dr. Fahey, who observed that she had a shuffling gait and appeared confused. Dr. Fahey stated that the claimant reported headaches, dizziness, light headedness, and various pains in her neck, left elbow, lower back, left knee and right ankle. He diagnosed the claimant with post-concussion syndrome, strains of the cervical and lumbosacral spine, strains of the right ankle and left knee, and a contusion of the left elbow. Dr. Fahey recommended physical therapy and an evaluation by a neurologist.

¶ 18 On May 8, 2003, the claimant returned to Dr. Fahey, who noted that she had a "flat affect" and walked with a deliberate gait. The claimant continued to complain of headaches and pain in her neck, elbow, knee, and lumbar spine. Dr. Fahey opined that the claimant was unable to work at that time and again recommended that she see a neurologist.

¶ 19 On July 3, 2003, at the request of Siemens, the claimant was examined by Dr. Martin Lanoff, a physiatrist working with an orthopedic surgical group, who noted that she was "highly distractable with marked pain behavior" and had "superficial non-anatomical tenderness." He also noted "maximal" pain behaviors and positive Wadell's findings, which measure nonorganic pain behaviors. He stated that the claimant showed overreacting pain behaviors, *i.e.*, "[s]imply lifting her big toe cause[d] [the claimant] pain." Dr. Lanoff found no medical explanation for the claimant's ongoing pain, but he stated that she likely had depression and required psychological treatment. Dr. Lanoff stated that claimant "may claim to have psychological issues from a head trauma," and he suggested that she have a "neuropsychological evaluation to be performed from an IME standpoint" to address her cognitive impairment. Dr. Lanoff stated that he expected the neuropsychological evaluation would show "nothing but depression and possibly manipulation"

and that, from a medical standpoint, the claimant had reached MMI and no further treatment or testing for her workplace injuries was necessary. Specifically, Dr. Lanoff stated that, in his opinion, the claimant "reached [MMI] long ago from a posttraumatic work-related injury aspect," but that she may want to seek a psychological consultation and neuropsychological evaluation, which would "be able to delineate between manipulation, malingering or psychological disease." Dr. Lanoff testified that the neuropsychological evaluation, which was a test he did not perform in his specialty, would simply help determine whether the claimant's psychological issues and subjective pain behaviors were related to her workplace head injuries. However, he did not believe the conditions were related based on his exam of the claimant and her medical records.

¶ 20 On July 14, 2003, the claimant had another MRI of her left knee which showed mild to moderate degenerative changes. A cervical MRI was performed soon thereafter, showing "no specific abnormalities."

¶ 21 On July 15, 2003, the claimant saw Dr. Fahey, who continued in his diagnosis of post-concussion syndrome and cervical and lumbar strains. On July 24, 2003, Dr. Fahey prescribed Celebrex and recommended physical therapy to treat the claimant's pain.

¶ 22 The claimant testified that, on October 24, 2003, she returned to her original family physician, Dr. Hughes, who referred her to Dr. Elaine Frankfort, a psychiatrist.

¶ 23 On January 12, 2004, the claimant saw Dr. Frankfort, who performed a mental-status exam which evaluated the claimant's appearance, affect, mood, thought process, and whether she was experiencing any delusions or hallucinations. Dr. Frankfurt diagnosed the claimant with depression due to concussion, chronic back pain and headaches, and prescribed antidepressant medication.

¶ 24 On January 20, 2004, the claimant saw Dr. Hughes, who recommended that the claimant follow-up with Dr. Frankfort and referred her to a neurologist, Dr. Lloyd Davis, and a pain specialist, Dr. Richard Noren.

¶ 25 On January 29, 2004, the claimant saw Dr. Noren for pain management, and he administered steroid injections on three subsequent occasions.

¶ 26 On February 22, 2004, the claimant saw Dr. Davis, who performed a general neurological examination and diagnosed the claimant with migraine headaches. He opined that it was possible that the headaches resulted from her previous head trauma.

¶ 27 In July 2004, the claimant underwent additional physical therapy, and in 2005, she received chiropractic care from Dr. Lina Milrud.

¶ 28 On August 8, 2006, at her attorney's request, the claimant was examined by Dr. Jeffrey Coe, who opined that she suffered from post-concussion syndrome with chronic headaches caused by her June 6, 2002, workplace accident. Dr. Coe also attributed the claimant's knee and back pain to her June 6, 2002, workplace accident and stated that she would benefit from a chronic pain management evaluation and treatment program. He stated that that the claimant's conditions of ill-being were permanent and that she was capable of sedentary work.

¶ 29 On October 9, 2007, at the request of Siemens, the claimant was examined a second time by Dr. Lanoff. Dr. Lanoff again did not find any medical explanation for the claimant's continued pain complaints and suspected that she had "significant psychological issues." He reiterated his previous opinion that the claimant was at MMI and that she could return to work without restrictions.

¶ 30 On November 20, 2008, the claimant testified that she continued to experience headaches, dizziness, black-outs occurring two to three times a week, and pain in her knees and

back. The claimant also testified that she had not worked for Siemens or any other employer since March 13, 2003.

¶ 31 On January 21, 2009, following a hearing on the consolidated claims, the arbitrator issued two decisions. Siemens was ordered to pay temporary total disability (TTD) benefits pursuant to section 8(b) of the Act (820 ILCS 305/8(b) (West 2002)) to the claimant for time periods between June 6 and August 19, 2002, and March 13 and July 3, 2003. Siemens was also ordered to pay \$13,666.46 for medical expenses the claimant incurred between June 6, 2002, and January 23, 2003, and an unspecified amount of all medical expenses incurred between March 13, 2003, and July 3, 2003

¶ 32 The claimant sought review of both decisions before the Commission. On June 14, 2010, the Commission issued two decisions, affirming in part, adopting in part, and modifying in part, the arbitrator's decisions. Relevant to this appeal, the Commission, with one commissioner dissenting, modified the arbitrator's award of medical expenses, specifically ordering Siemens to authorize and pay for the claimant to undergo a neuropsychological evaluation as recommended by its independent medical examiner, Dr. Martin Lanoff. The Commission stated that, in its view, Siemens "should have followed up on this recommendation and had [the claimant] undergo a neuropsychological evaluation." Because Siemens failed to do so, the Commission stated that it found "it appropriate" to order the evaluation. The dissenting commissioner stated that she did not believe a neuropsychological evaluation was appropriate because Dr. Lanoff explained that he did not believe such an evaluation was related to the workplace injuries.

¶ 33 The claimant sought judicial review of the Commission's decisions in the circuit court of Cook County. On February 24, 2011, the circuit court confirmed the decisions of the Commission, remanded the cause with directions to determine the amount of medical bills

incurred between March 13, 2003, and July 3, 2003, and stated that all other appealable issues were stayed until the Commission determined the amount of the medical bills.

¶ 34 On September 24, 2012, upon the circuit court's remand, the Commission determined that the amount of medical bills incurred between March 13, 2003 and July 3, 2004, was \$18,017.90.

¶ 35 The claimant sought review of the Commission's decision in the circuit court. On March 19, 2013, the circuit court confirmed both decisions of the Commission. Siemens now appeals.

¶ 36 In this appeal, Siemens argues that the Commission's decision, that the claimant is entitled to a neuropsychological evaluation, is against the manifest weight of the evidence. Siemens contends that the dissenting commissioner was correct in pointing out that Dr. Lanoff stated that, while he recommended the neuropsychological evaluation, such an evaluation was not related to the injuries stemming from the workplace accident. Siemens further argues that none of the claimant's physicians actually ordered such an exam; therefore, it should not have to authorize and pay for one. We disagree.

¶ 37 Section 8(a) of the Act (820 ILCS 305/8(a) (West 2002)) states, in relevant part:

“The employer shall provide and pay * * * all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred, limited, however, to that which is reasonably required to cure or relieve from the effects of the accidental injury.” 820 ILCS 305/8(a) (West 2002).

¶ 38 "Specific procedures or treatments that have been prescribed by a medical service provider are 'incurred' within the meaning of section 8(a) even if they have not been performed or paid for." *Dye v. Illinois Workers' Comp. Comm'n*, 2012 IL App (3d) 110907WC, ¶ 10, 981 N.E.2d 1193, 1198. The claimant bears the burden of proving, by a preponderance of the evidence, her entitlement to an award of medical care under section 8(a). *Id.* Questions

regarding entitlement to prospective medical care under section 8(a) are factual inquiries for the Commission to resolve, and its decisions on factual matters will not be disturbed on appeal unless they are against the manifest weight of the evidence. *Id.* A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *Id.*

¶ 39 Here, the Commission's decision to award the claimant prospective medical care in the form of a neuropsychological evaluation is not against the manifest weight of the evidence. The Commission, upon reviewing the totality of the evidence, concluded that the neuropsychological evaluation recommended by Dr. Lanoff is a reasonable and necessary medical service which would help determine whether the claimant's pain complaints and behaviors were related to her workplace injuries. We disagree with Siemens' argument that section 8(a) covers only medical procedures or services prescribed by the claimant's treating physicians as the plain language of the statute contains no such limitation. Further, there is nothing in the record refuting the necessity or reasonableness of the neuropsychological test which would allow us to disturb the Commission's decision. Based on these facts, we find that the Commission's decision requiring Siemens to authorize and pay for the neuropsychological evaluation recommended by its independent medical examiner is not against the manifest weight of the evidence.

¶ 40 Based upon the foregoing analysis, we affirm the judgment of the circuit court of Cook County, which confirmed the decision of the Commission and remand the matter back to the Commission for further proceedings.

¶ 41 Affirmed; cause remanded to the Commission.