2014 IL App (2d) 130490WC-U
No. 2-13-0490WC
Order filed June 18, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

Workers'' Compensation Commission Division

ROMANO'S TILE COMPANY, INC.,	)	Appeal from the Circuit Court
	)	of Kane County.
Appellant,	)	
	)	
v.	)	No. 12-MR-527
	)	
THE ILLINOIS WORKERS'	)	
COMPENSATION COMMISSION, *et al.*	)	Honorable
	)	David R. Akemann,
(Michael Jakubosky, Appellee).	)	Judge, presiding.

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

ORDER

¶ 1 *Held*: The Commission's determination that the claimant sustained an injury which arose out of and in the course of his employment was not against the manifest weight of the evidence where there was sufficient evidence in the record to support the Commission's determination.

¶ 2 The claimant, Michael Jakubosky, worked as a ceramic tile setter for the employer, Romano's Tile Company, Inc. The claimant filed an application for adjustment of claim pursuant to the Illinois Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.*

(West 2010)), alleging that on March 31, 2011, he sustained a work-related injury to his left knee.

¶ 3 The claim proceeded to an expedited arbitration hearing under section 19(b) of the Act (820 ILCS 305/19(b) (West 2010)). The arbitrator found that the claimant failed to prove that he sustained a compensable accident and denied benefits. The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission). The Commission reversed the arbitrator's decision and remanded the case to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322 (1980). The employer appealed the Commission's decision to the Kane County circuit court. The circuit court confirmed the Commission's decision. The employer appeals the judgment of the circuit court. We affirm.

¶ 4 BACKGROUND

¶ 5 The following evidence was presented at the arbitration hearing held on November 3, 2011. The claimant, who had been a ceramic tile setter for 27 years, began working for the employer in 1991. The claimant testified that he had been working for the employer on a commercial remodel for about a week and a half, installing new ceramic tile in the bathrooms of a DSW shoe store. The claimant's average work week was 40 hours, and his regular shift on that particular job was 9:30 p.m. to 5:00 a.m. He arrived at work at 9:00 p.m. on the evening of March 30, 2011. The claimant testified that he was kneeling on his right knee, with his left leg flexed 90 degrees when he reached over his left knee to get a sponge from a bucket that was two feet away. He testified that his left knee "popped" and that he immediately felt an "unbelievable" burning sensation on the inside of his left knee.

The claimant testified that he had been working approximately three and a half hours when the incident occurred. He testified that he was working with Jim Karas at the time. The claimant testified that he immediately stopped work and reported his injury to a supervisor for the general contractor.

¶ 6 The claimant sought immediate medical care at the Delnor Community Hospital emergency room. He testified that he called Mr. Romano, the president of the employer company, to report the work incident about five or six o'clock the next morning.

¶ 7 The claimant testified that in 1994 he received treatment for an infection to his left knee that required him to miss work for approximately four to six weeks. The claimant denied suffering any injury to his left knee from 1994 until the accident on March 31, 2011. He also denied receiving any additional medical care or missing work for injuries to his left knee from 1994 until March 31, 2011.

¶ 8 Medical records from Delnor Community Hospital were admitted into evidence. Review of the medical records indicates that the claimant drove himself to the emergency room, and he arrived at 2:41 a.m. on March 31, 2011. The claimant reported that he was kneeling at work, twisted, and subsequently felt and heard a "pop" to his left knee. The claimant also reported mild pain in his left medial knee area and lateral thigh. Examination of his left knee was positive for edema and bruising, and the medical staff applied ice. X-rays were taken of his left knee. The claimant was diagnosed with a left knee sprain with possible internal derangement. He was given ibuprofen and a knee immobilizer to apply at home. The claimant was told to follow up with his regular doctor if his symptoms persisted.

¶ 9 On April 6, 2011, the claimant was treated by Dr. Sean Jereb, an orthopedic specialist. On the patient intake form, the claimant wrote, "I was kneeling on right knee while left knee was bent[;] reached to grab sponge from bucket and heard and felt a loud pop in knee. Started burning quickly." While the physical examination revealed no erythema or ecchymosis, Dr. Jereb noted a "1+ effusion *** medial joint line tenderness and peripateller tenderness." Dr. Jereb diagnosed the claimant with "left knee degenerative joint disease with possible loose body versus meniscal tear." He ordered a magnetic resonance imaging (MRI) scan of the claimant's left knee and instructed the claimant to remain off of work.

¶ 10 On April 14, 2011, the claimant was examined by Dr. Terry I. Younger, an orthopedic specialist. Dr. Younger noted that the MRI scan of the claimant's left knee showed osteoarthritis and diagnosed the claimant with "[l]eft anterior knee strain with osteoarthritis." He administered a corticosteroid injection to the claimant's left knee and prescribed physical therapy, a home exercise program, and the use of ice and anti-inflammatory medication. Dr. Younger gave the claimant a knee brace and directed him to remain off of work.

¶ 11 When the claimant returned to see Dr. Younger on April 28, 2011, the doctor noted that the corticosteroid injection had not relieved the claimant's left knee pain. Dr. Younger recommended that the claimant undergo a "unicompartmental knee arthroplasty" and opined that the claimant would not be able to return to work as a tile setter without the reconstructive procedure. The claimant expressed a desire to proceed with the recommended surgery.

¶ 12 The claimant testified that Dr. Younger released him to return to light duty work on May 19, 2011. The record reveals that on May 31, 2011, the claimant requested a restriction note from Dr. Younger. The claimant testified that he returned to light duty work for the employer on June 2, 2011.

¶ 13 The claimant testified that he was examined by the employer's section 12 examiner, Dr. Ira Kornblatt. Dr. Kornblatt's report was not admitted into evidence by the employer.

¶ 14 The claimant saw Dr. Younger in follow up on four more occasions. On each occasion Dr. Younger recommended surgery for the claimant's left knee. On August 18, 2011, Dr. Younger diagnosed the claimant with "left knee trauma with osteoarthritis." In his progress note Dr. Younger wrote:

> "[The claimant] continues to be very symptomatic. This is an aggravation of previous knee issues. He previously was able to perform activities at work but not any longer."

The claimant testified that he wanted to have the recommended surgery but that it had not been approved by the insurance carrier.

¶ 15 On September 8, 2011, Dr. Mitsos reviewed the claimant's medical records at the request of the employer, but he did not examine the claimant. In his report Dr. Mitsos opined that there was no causal connection between the claimant's left knee injury and the work-related accident.

¶ 16 Jim Karas testified on behalf of the claimant. On direct examination Karas testified that he was working for the employer on March 31, 2011. He stated that he had worked with the claimant approximately five or six times prior to March 31, 2011, and he had never

heard the claimant complain of left knee pain. Karas testified that he was working "side by side" with the claimant on March 31, 2011. He testified that between 1 and 2 a.m., as the claimant was reaching around for the water bucket, Karas heard a "pop." Karas asked the claimant, "Was that your knee?" and the claimant answered in the affirmative. Karas testified that they got ice for the claimant's knee and that he convinced the claimant to go to the emergency room to have his knee examined.

¶ 17 On cross examination Karas was asked about his employment with the employer. The following colloquy occurred:

> "Q. When did your last employment end with [the employer]?
>
> A. I don't know. Last job I did for them was—I think I did one more—we had one more job after the DSW store.
>
> Q. You would have ended in approximately 2011?
>
> A. Yeah. In fact, I think it was actually January. I worked up until January and then in February then I was laid off.
>
> Q. You were laid off from [the employer] in February of 2011?
>
> A. I'm trying to think what the days were. Yeah. Because I went for hernia surgery in February of this year."

The claimant's attorney did not conduct redirect examination of the witness.

¶ 18 Following the hearing the arbitrator issued a written decision. The arbitrator concluded:

> "***Petitioner testified he was working with James Karas on March 31, 2011[,] and Mr. Karas testified the same on direct. But on cross-examination Mr. Karas

> acknowledged he was off work for hernia surgery in Feb. 2011 and then was laid off. With that testimony, Mr. Karas' credibility evaporated and [the claimant's] was damaged beyond rehabilitation. All other issues are moot."

The arbitrator found that the claimant failed to meet his burden to prove he had sustained a compensable injury and denied benefits. The claimant appealed to the Commission, and the Commission reversed the arbitrator's decision, finding that the claimant did prove that he sustained a compensable injury. The employer appealed to the circuit court, but the circuit court confirmed the Commission's decision in its entirety. The employer filed a timely appeal.

¶ 19 ANALYSIS

¶ 20 On appeal, the employer urges this court to review the Commission's decision *de novo*. In support of its position, the employer correctly states that where the facts are undisputed and susceptible of but a single inference, the issue becomes one of law, and the Commission's decision is in no way binding upon the reviewing court. *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 60, 541 N.E.2d 665, 668 (1989). The employer suggests that since Karas's testimony that he did not work for the employer after February 2011 was undisputed, the only inference that could have been drawn was that Karas and the claimant "lied about the alleged events of March 31, 2011." The employer further suggests that without Karas's testimony, the claimant could not meet his burden to prove that he sustained a compensable injury.

¶ 21 Regarding the standard of review, the employer fails to recognize that if the undisputed facts "permit more than one reasonable inference, the determination of such

issues presents a question of fact, and the conclusion of the Commission will not be disturbed on review unless it is contrary to the manifest weight of the evidence." *Caterpillar Tractor Co.*, 129 Ill. 2d at 60, 541 N.E.2d at 668. Here, more than one reasonable inference was in fact drawn from Karas's undisputed testimony. The inference drawn by the arbitrator was that Karas's conflicting testimony negatively impacted his credibility, whereas the Commission inferred that Karas's conflicting testimony revealed that he was uncertain as to when he last worked for the employer. Accordingly, we reject the employer's invitation to apply a *de novo* standard of review and instead review the Commission's decision under the manifest weight of the evidence standard.

¶ 22 The employer argues, in the alternative, that the Commission's determination that the claimant sustained a compensable injury is against the manifest weight of the evidence. We disagree.

¶ 23 To obtain compensation, a claimant bears the burden to show, by a preponderance of the evidence, that he suffered an injury arising out of and in the course of his employment. *Village of Villa Park v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 130038WC, ¶ 17, 3 N.E.3d 885. The "in the course of" component refers to the time, place, and circumstances of the accident. *Caterpillar Tractor Co.*, 129 Ill. 2d at 57, 541 N.E.2d at 667. "The 'arising out of' component addresses the causal connection between a work-related injury and the claimant's condition of ill-being." *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 786, 821 N.E.2d 807, 812 (2005). "The question of whether a causal relationship exists between a claimant's employment and his workplace injury is a question of fact to be resolved by the Commission, and its resolution of the issue

will not be disturbed on appeal unless it is against the manifest weight of the evidence." *Village of Villa Park*, 2013 IL App (2d) 130038WC, ¶ 19, 3 N.E.3d 885. "For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent." *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910, 851 N.E.2d 72, 77 (2006). The appropriate test is not whether the reviewing court might have reached a different conclusion, but whether there is sufficient evidence in the record to support the Commission's determination. *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866, 923 N.E.2d 870, 877 (2010). "It is within the province of the Commission to resolve disputed questions of fact, including those of causal connections, to draw permissible inferences from the evidence, and to judge the credibility of the witnesses." *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, ¶ 26, 993 N.E.2d 473. This court will not disregard or reject permissible inferences drawn by the Commission merely because other inferences might have been drawn. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206, 797 N.E.2d 665, 673 (2003).

¶ 24 The Commission concluded that the arbitrator placed undue emphasis on Karas's equivocal testimony regarding his last date of employment with the employer and determined that the arbitrator ignored the balance of the testimony and the medical records. Even without Karas's testimony, there was sufficient evidence in the record to support the Commission's decision.

¶ 25 "A claimant's testimony, standing alone, may support an award where all of the facts and circumstances do not preponderate in favor of the opposite conclusion." *Shafer v.*

Illinois Workers' Compensation Comm'n, 2011 IL App (4th) 100505WC, ¶ 35, 976 N.E.2d 1. "A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *Id*. at ¶ 39, 976 N.E.2d 1.

¶ 26 On March 31, 2011, the claimant immediately reported the injury to his left knee to a supervisor of the general contractor before he left work to seek medical attention. Additionally, the claimant reported a consistent history of a work-related left knee injury at the emergency room and subsequently to his medical providers. The employer argues that the record, when viewed as a whole, indicates that the Commission relied in error on the medical history given by the claimant. However, careful review of the record establishes that the claimant's history of a work-related left knee injury and subjective complaints of pain were supported by objective findings.

¶ 27 The medical records reveal that the claimant presented to the emergency room at 2:41 a.m. on March 31, 2011, complaining of left knee pain. Physical examination of the claimant's left knee revealed edema and bruising. The claimant was diagnosed at the emergency room with a left knee sprain with possible internal derangement. Dr. Younger later diagnosed the claimant with "left knee trauma with osteoarthritis" and recommended surgery. Finally, Dr. Younger opined that the claimant's condition was "an aggravation of previous knee issues," and he emphasized the fact that prior to March 31, 2011, the claimant had been able to perform activities at work without complications or treatment.

¶ 28 Accordingly, we find that there is sufficient evidence in the record to support the

Commission's determination that the claimant sustained a compensable accident on March 31, 2011.

¶ 29 CONCLUSION

¶ 30 For the foregoing reasons, we affirm the circuit court's judgment, which confirmed the decision of the Commission, and remand the case to the Commission for further proceedings pursuant to *Thomas*, 78 Ill.2d 327, 399 N.E.2d 1322.

¶ 31 Affirmed and remanded.