2014 IL App (2d) 130912WC-U
No. 2-13-0912WC
Order filed November 17, 2014

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

Workers' Compensation Commission Division

ROTO LINCOLN MERCURY, INC.,	)	Appeal from the Circuit Court
	)	Lake County, Illinois
Plaintiff-Appellant,	)	
	)	
v.	)	No. 12 MR 2060
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION and DOMENIC BARTOLAI,	)	Honorable
	)	Margaret J. Mullen,
Defendants-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 decision of the Commission which determined that the claimant's injury was causally connected to his employment was affirmed where it was not contrary to the manifest weight of the evidence.

¶ 2 The employer, Roto Lincoln Mercury (Roto), appeals from the circuit court judgment confirming the decision of the Workers' Compensation Commission (Commission) which awarded the claimant, Domenic Bartolai, benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2006)). For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on February 27, 2012. At the time of his injury, the claimant was 57 years old and had been employed by Roto for about 25 years as an automobile body shop worker. He described his responsibilities as heavy frame repair work, including disassembling cars and "pulling" bent frames. The claimant was required to place cars onto frame machines which lifted them about three feet off of the ground. He would then attach chains and clamps to the cars, and through the use of tower machines, pull the bent car frames, sometimes also hitting the metal with sledge hammers. When the claimant attached the chains from the cars to the tower machine, he needed to ensure that there was no slack.

¶ 4 On July 3, 2008, the claimant was "reaching around" attempting removing slack from a chain when he felt a "pop" in the back of his right shoulder, followed by sharp pain. He was off of work for the next three days for the July 4th holiday, but when he returned to work, his shoulder continued to bother him, so he informed Roto that he was going to seek treatment for the injury. On July 14, 2008, the claimant was examined by Dr. Arnold Cohn, who diagnosed him with rotator cuff tendonitis with possible elements of adhesive capsulitis. An x-ray revealed some degenerative change at the acromioclavicular (A/C) joint and small superior osteophytes and ossicles. Dr Cohn prescribed pain medication for the claimant and instructed him to begin physical therapy and to follow up in two weeks. He also placed the claimant on a two-week restriction requiring him to work at waist level and to lift no more than 5 pounds.

¶ 5 On August 8, 2008, the claimant returned to Dr. Cohn, who reported that he was continuing to experience right shoulder pain that was unchanged by medication and physical therapy. The doctor ordered an MRI, which, according to the radiologist, Dr. Jeffrey Bernfield, revealed an increased signal within the distal supraspinatus tendon, consistent with tendonosis and a partial thickness tear. Doctor Bernfield also noted moderate degenerative and hypertrophic

changes at the A/C joint level. On August 12, 2008, Dr. Cohn diagnosed the claimant with rotator cuff tendonosis, a partial thickness tear, trophic changes at the A/C joint, and degenerative changes. He gave the claimant an injection in his subacromial bursa and recommended that he continue with physical therapy.

¶ 6 Following an examination on September 19, 2008, Dr. Cohn reported that the claimant had benefitted somewhat from the injection, although he had related to the doctor that his greatest improvement came from taking ibuprofen for several weeks. The doctor noted that a second review of the MRI showed signs of tendonopathy. He prescribed medication, and recommended that, if the claimant's symptoms were still affecting his quality of life in one month, he should proceed with an arthroscopic evaluation and possible subacromial decompression.

¶ 7 After an evaluation on November 15, 2008, Dr. Cohn again reported slight improvement, but observed that the claimant still had pain in his right shoulder with a painful arc of abduction and some pain with full extension and internal rotation. The doctor also noted that the claimant has a history of cervical disc disease, and that a 2004 MRI showed some disc herniation and protrusion. His impression was of cervical radicular symptoms. Dr. Cohn recommended arthroscopy of the claimant's shoulder with subacromial decompression and possible rotator cuff repair if indicated. He explained the surgical recovery process to the claimant, and noted that the claimant would be calling to schedule the procedure.

¶ 8 In his testimony, the claimant stated that his shoulder was not really improving despite the physical therapy and injections. Nonetheless, he acknowledged that he decided against the surgical procedure recommended by Dr. Cohn, and that he continued to work full duty "with pain." The claimant testified that he was not placed on any further lifting restrictions and that he missed very little work as a result of the injury.

¶ 9 The record indicates that, in the period from June 2008, until April 15, 2009, the claimant was undergoing regular treatment at Bannockburn Chiropractic & Sports Injury Center, primarily for neck and lower back issues unrelated to the shoulder injury. In January of 2009, during one of these treatments, the claimant informed the chiropractor, Dr. Brian Allen, about the problems with his right shoulder, stating that his shoulder was "locking" due to nonuse. The claimant testified that Dr. Allen began "working on" the shoulder by stretching and pulling it, in an attempt to loosen it up. However, apart from providing some initial relief on the day of the treatment, it did not really help his condition. According to Dr. Allen's records, during treatment on March 25, 2008, the claimant reported mild right shoulder tightness "after playing golf over the weekend," that it was the "first time [he was] able to *** golf," and that he was taking a "trip to Fla (sic) next wk (sic)—would like to play more golf." On April 15, 2008, Dr. Allen's records stated that the claimant reported being able to play golf on a daily basis while in Florida, and that he suffered periodic right shoulder pain with his backswing and mild tightness afterwards.

¶ 10 The claimant testified that, in the late summer and early fall of 2009, his shoulder began bothering him again, specifically, that he could not "go back" with his arm. He informed Roto's owner and general manager, Mike Santi, that his pain was growing worse and that he may require surgery or another injection. The following day, on November 25, 2009, the claimant sought treatment from Dr. Cohn, who gave him two injections in his right shoulder: one in the glenohumeral joint, and another in the subacromial bursa. In Dr. Cohn's report from that examination, he notes that the claimant had a "recurrence" of right shoulder pain from the 2008 injury, and that his symptoms had "completely resolved until a month ago." He noted right anterolateral deltoid pain which is worse when the claimant attempts to abduct his shoulder, and is "very painful" at night. The doctor further observed that the claimant had immediate improvement upon receiving the injections, but stated that, if the shoulder symptoms persisted,

he would proceed with an MRI, because the night time pain suggested a possible rotator cuff tear. According to the claimant, the shots ultimately gave him very little relief, but he nonetheless continued to do his job every day.

¶ 11 On cross-examination, the claimant acknowledge that he had seen Dr. Cohn on October 27, 2009, for treatment of unrelated conditions and that he had mentioned nothing to the doctor about the recurrence of his right shoulder pain. The claimant also admitted that he was an "average" golfer in that he usually golfed twice a week, playing nine holes during the week and 18 holes on Sundays. He acknowledged playing golf in the Spring and summer months of 2009, 2010, and 2011, typically stopping for the year in late September or early October. The claimant denied telling Dr. Cohn that his symptoms had resolved in the period before his visit of November 25, 2009, and testified that in fact they had never resolved. He acknowledged that he was never placed on restricted work duty after the accident; however, he indicated that he had discussed a 20-pound lifting restriction with Dr. Cohn, and opted not to do it. According to the claimant, he wanted to work, and would be unable to perform his duties with a 20-pound restriction because everything he lifts on the job is much heavier than that.

¶ 12 On re-direct examination, the claimant testified that swinging a golf club required much less effort than swinging the sledgehammer he used on the job. According to the claimant, the sledgehammer weighed 8 to 10 pounds, and at times had to be swung at shoulder level to hit a car frame raised three feet off of the ground. The claimant testified that his shoulder became particularly sore and painful after lifting or otherwise working with heavy equipment such as the frame machine, the sledgehammer, car doors and front bumpers.

¶ 13 On May 3, 2010, the claimant returned to Dr. Cohn and received another two injections to his glenohumeral joint and subacromial bursa. The doctor noted that the claimant had excellent relief from his injections in November of 2009 until about one month ago, when the

pain returned. He further observed that a new x-ray is basically unchanged, and shows some mild degenerative arthritis of the glenohumeral joint. Again, the doctor recommended that if the claimant's symptoms persisted or recurred, he should repeat an MRI and consider arthroscopic subacromial decompression.

¶ 14 The claimant again sought treatment on August 24, 2010, at which point Dr. Cohn stated that he could not administer any further injections to him. The doctor noted that his symptoms were due primarily to impingement syndrome, and recommended an MRI in anticipation of surgery. According to the claimant, Dr. Cohn subsequently informed him that his MRI disclosed a torn rotator cuff and that surgery would now be required. The results of the MRI confirmed "interval worsening since the prior study from August 2008," and that there is "now focal increased signal within the distal supraspinatus tendon which is hyperintense and now *** contacts both cortical and bursal surfaces, consistent with a tear."

¶ 15 On November 29, 2010, the claimant underwent an independent medical examination at the request of Roto with Dr. Nikhil Verma of Midwest Orthopedics. Doctor Verma stated that, based upon his review of the medical records following the July 3, 2008, work-related injury, the claimant had suffered a right shoulder sprain with mild impingement. According to Dr. Verma, the MRI of August 2008 "does not show evidence of significant rotator cuff tear including partial or full-thickness tear." Dr. Verma noted that the claimant underwent "conservative care with antiinflammatories (sic) and injections along with chiropractic care and had subsequent resolution of symptoms until his recurrence in approximately October 2009." Upon reviewing the August 2010 MRI, Dr. Verma concluded that this showed a full-thickness tear of the claimant's rotator cuff, but that this tear "is not causally related to his work injury, but rather consistent with underlying rotator cuff degeneration which occurs over time." Similarly, Dr. Verma believed that "the need for surgery on the right shoulder is not causally related to his

work injury," but instead represents "a general worsening of his shoulder condition that occurs as part of an age-related process."

¶ 16 The claimant's final consultation with Dr. Cohn occurred on January 18, 2011, at which time the doctor reported that he continues to have pain and limited range of motion in the right shoulder. The doctor noted that the claimant "is not tender over the A/C joint; although, in the past, I have questions (sic) whether some of his symptoms are from A/C arthritis." The report also stated that the claimant "reports that his symptoms actually began in late June/July 2008, when he was lifting at work." The doctor again prescribed arthroscopic decompression of the shoulder with possible rotator cuff repair.

¶ 17 According to the claimant, he has not yet undergone surgery because he is awaiting authorization from Roto's insurance carrier. The claimant testified that he continued to work for Roto until March 24, 2011, but was given a "helper" by Roto to assist with heavy work on the frame machine and with other jobs he was unable to do.

¶ 18 Roto offered the testimony of its chief financial offer, Mr. Doukas, regarding information provided to the worker's compensation insurer. According to Doukas, the claimant informed him about his medical treatment, and continuously complained that his shoulder was not getting better. Doukas testified that he notified the carrier that the accident date was July 3, 2008, and that the claimant's condition "is ongoing. His shoulder is not getting any better. He has been complaining about it."

¶ 19 Following a hearing, the arbitrator rejected the claim, finding that the claimant had failed to present any medical evidence proving that the July 3, 2008, work accident, caused his present state of ill-being. The arbitrator rejected the claimant's testimony that his shoulder condition was continuous and ongoing through 2011, finding that this conflicted with the medical reports which showed that his symptoms were resolved following the initial course of treatment in 2008.

This was supported by the fact that, from November 15, 2008, until November 24, 2009, the claimant sought no specific treatment for his shoulder, but continued to play golf, "playing 24 holes per week." The arbitrator noted that, when the claimant did complain of a recurrence of his symptoms on November 24, 2009, he stated to Dr. Cohn that his condition had previously resolved, and did not indicate any specific activity that brought on the recurrence.

¶ 20 The claimant sought review before the Commission. On December 3, 2012, the Commission reversed the arbitrator's decision, and ordered Roto to pay the claimant's medical expenses of $5,991 and prospective medical expenses for arthroscopic surgery to his right shoulder, under section 8(a)(2) of the Act (820 ILCS 305/8(a)(2) (West 2010)), plus accrued interest under section 19(n) of the Act (820 ILCS 305/19(n) (West 2010)). In rejecting the decision of the arbitrator, the Commission discounted the opinion of Dr. Verma that the August 8, 2008, MRI does not show evidence of a rotator cuff tear, pointing out that both Drs. Cohn and Bernfield expressed a contrary opinion.

¶ 21 Roto then sought judicial review of the Commission's decision in the circuit court of Lake County. On August 13, 2013, the circuit court confirmed the Commission's decision. Roto now appeals.

¶ 22 On appeal, Roto does not dispute that the claimant sustained an injury on July 3, 2008, which arose out of and in the course of his employment. Rather, it argues that the Commission's determination that the claimant's present state of ill-being is causally related to that injury is contrary to the manifest weight of the evidence. Specifically, Roto asserts that the claimant's testimony that his shoulder symptoms were continuous and ongoing until 2011 was contradicted by the medical evidence, particularly the notations of Dr. Cohn, allegedly indicating that the symptoms were resolved by November 2008. Roto points to the fact that, although the claimant was being treated for unrelated injuries from late in 2008 through early 2009, he failed to seek

any specific help for his right shoulder until November of 2009, and at that point, admitted to Dr. Cohn that his symptoms had been fully resolved until the previous month. Finally, Roto contends that the claimant played golf "from December of 2008 into the Fall of 2009" and that this likely precipitated his need for treatment in November, although he fails to account for the impact of this activity on his shoulder. Accordingly, Roto urges that the claimant's testimony be disregarded as not credible. We disagree.

¶ 23 On appeal, we will not reverse a decision by the Commission unless that decision is contrary to law or against the manifest weight of the evidence. *Durand v. Indus. Comm'n*, 224 Ill. 2d 53, 64, 862 N.E.2d 918 (2006). Put another way, reversal is not warranted unless an opposite conclusion is readily apparent from the evidence. *Mendota Township High School District vs. Industrial Commission*, 243 Ill. App. 3d 834, 836-837, 612 N.E. 2d 77 (1993). It is the Commission's role to assess the credibility of witnesses and to resolve conflicts in the evidence, including medical evidence. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 65, 442 N.E.2d 908 (1982); *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674, 928 N.E.2d 474 (2009). A court of review must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn. *Sisbro, Inc. v. The Industrial Commission*, 207 Ill. 2d 193, 206, 797 N.E.2d 665 (2003); *Kawa v. Illinois Workers' Comp. Comm'n*, 2013 IL App (1st) 120469, 991 N.E.2d 430.

¶ 24 In this case, Roto's contention that the claimant's shoulder injury was resolved by November 2008, reflects only its own perception of the evidence. In fact, the medical records show that the symptoms had not completely abated after the initial course of treatment, but were only temporarily eased with the use of injections and medication. Both Drs. Cohn and Bernfield identified a partially torn rotator cuff for which Dr. Cohn recommended surgery; nonetheless, the claimant elected to forego that option in order to continue working, despite the fact that he was

admittedly in pain. Further, contrary to Roto's assertion, the claimant did inform Dr. Allen in January of 2009 that his right shoulder was "locking," and he received chiropractic treatment, to little avail. By the fall of 2009, the claimant reported to Santi while at work that his pain was growing worse and that he required medical care or possible surgery. Based upon this evidence, we cannot conclude that the claimant's injury was fully healed; rather, it is more likely that he chose to endure his symptoms and continue with his daily life.

¶ 25 The fact that the claimant may have indicated to Dr. Cohn in November of 2009, that, until the past month, his injury was "resolved," is insufficient to render his testimony not credible. He denied at trial that his symptoms had ever ceased, and this is supported by the fact that he sought and underwent chiropractic treatment for his shoulder from January until mid-April of 2009. The fact that there was a gap in treatment between April and November of 2009, standing alone, does not compel a conclusion that the claimant was "cured" or pain-free, particularly in light of the testimony of Roto's own witness, Doukas, that the claimant complained that his shoulder had been bothering him continuously since July of 2008.

¶ 26 Last, assuming *arguendo* that golfing may have helped exacerbate the claimant's rotator cuff tear, the tear itself was diagnosed as a result of the work injury. Throughout the period shortly after the claimant's injury until his 2011 diagnosis, he continued to perform his full duties, which included 40 hours per week of metal lifting, pulling car frames, and swinging an 8 to 10 pound sledgehammer over his shoulder against metal, often extending with force from shoulder level. He acknowledged that, while he experienced some stiffness following golf, he had severe pain in his shoulder on the days he performed heavy metal work. It is well-settled that, in order to justify recovery for a work-related injury, an employee must only show that the injury was *a* causative factor in his condition of ill-being; it need not be the sole causative factor, or even the primary causative factor. *Sisbro*, 207 Ill. 2d at 205; *Rock Road Construction Co. v.*

Industrial Comm'n, 37 Ill. 2d 123, 127, 227 N.E.2d 65 (1967). Here, the injury originated as a result of the strenuous physical tasks the claimant was called upon to perform in his job. He continued to perform the same tasks full-time until late 2010 or early 2011, as his condition worsened. Roto provides no evidence the claimant's his golf game was a significant contributing factor in his current state of ill-being.

¶ 27 Roto also argues that Dr. Cohn's records fail to prove that the claimant's present condition of ill-being and need for surgery were causally related to the original injury rather than the result of age-related degeneration of the shoulder. In support of this position, Roto refers to Dr. Cohn's notation in his January 18, 2011, report, that he had questioned in 2008 whether some of the claimant's symptoms were due to A/C arthritis.

¶ 28 Direct medical testimony is not essential to support the conclusion that an accident caused a claimant's condition of ill-being. *International Harvester*, 93 Ill. 2d at 66; *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 912, 851 N.E.2d 72 (2006). Circumstantial evidence can be sufficient to prove a causal nexus between an accident and the claimant's injury. *University of Illinois*, 365 Ill. App. 3d at 912*; Gano Electric Contracting v. Industrial Comm'n*, 260 Ill. App. 3d 92, 96-97, 631 N.E.2d 724 (1994). " '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.' " *Kawa*, 2013 IL App (1st) 12046 (quoting *International Harvester*, 93 Ill. 2d at 63-64).

¶ 29 The medical evidence and testimony indicates that, as a result of a 2008 work injury, the claimant sustained a partial tear in his right rotator cuff that was not present before and that was never repaired. We agree with the Commission that, regardless of Dr. Cohn's hypothesis that some of the claimant's symptoms may be attributable to degeneration, he diagnosed him with a

partial tear of the right rotator cuff in 2008, and a full tear 2011, and recommended arthroscopic surgery on both occasions as a means to repair the condition. Roto's arguments on this issue, again based upon the position that the claimant's work related injury had resolved itself and that he was "symptom-free" by late 2008, improperly ask this court to reweigh the evidence before the Commission. The evidence sufficiently showed that the claimant, despite ongoing treatment with medications, injections, physical therapy, and chiropractic adjustment and therapy, never sustained complete recovery to his shoulder following the 2008 injury; that he elected to forego shoulder surgery which was recommended several times based upon his symptoms and MRI's, and to continue working at the same physically-taxing job despite his pain.

¶ 30 Last, Roto contends that the Commission erred in rejecting the testimony of Dr. Verma, which concluded that the claimant's torn rotator cuff as apparent in January 2011, did not arise from his 2008 injury, but was the result of "underlying rotator cuff degeneration which occurs over time." According to Roto, Dr. Verma's opinion was the only evidence as to the cause of the claimant's current condition of ill-being.

¶ 31 Doctor Verma's opinion presented only one view of the medical records, and was contradicted by that of Drs. Cohn and Bernfield. Unlike the latter physicians, Dr. Verma did not believe that the claimant sustained any tear from the original injury. Further, although he believed that the subsequent tear resulted solely from normal aging, we find it significant that Dr. Verma completely omitted any consideration of the strenuous physical nature of the claimant's job, which he performed for Roto for 25 years. We see no basis to reverse the finding of the Commission as to his opinion.

¶ 32 Based upon the foregoing analysis, we are unable to find that the decision of the Commission is against the manifest weight of the evidence.

¶ 33 Affirmed.