

2014 IL App (3d) 130298WC-U

Workers' Compensation
Commission Division
Filed February 19, 2014

No. 3-13-0298WC

NOTICE : This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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

MICHAEL SHERROD, deceased,)	Appeal from the
by his mother and Special Representative,)	Circuit Court of
GLADYS SHERROD,)	Tazewell County, Illinois
)	
Appellant,)	No. 12 MR 95
)	
)	
v.)	
)	Honorable
STAR TRANSPORT, INC. and)	Paul Gilfillan,
ILLINOIS WORKERS' COMPENSATION)	Judge Presiding.
COMMISSION, <i>et al.</i> ,)	
)	
Appellees.)	

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 finding of the Workers' Compensation Commission that the decedent's death was not causally related to his employment was not against the manifest weight of the evidence.

¶ 2 The claimant, Gladys Sherrod, *pro se*, on behalf of her deceased son, Michael Sherrod, appeals from an order of the Circuit Court of Tazewell County, confirming a decision of the Illinois Workers' Compensation Commission (Commission) that the decedent's death was not causally related to his employment and denying 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 evidence was presented at the arbitration hearing. The decedent began working for the respondent, Star Transport, Inc. (Star), on May 1, 2008, as a long haul truck driver. Before he was hired, he underwent a physical examination and was found medically fit for the job. Upon commencing his employment, the decedent began a probationary training period with Star. On June 15, 2008, about five weeks into training, he was on a route from Florida to Peoria, Illinois, when he stopped in Lebanon, Tennessee, for the night. When the decedent failed to check in with Star on that date, Star contacted the management of the hotel in which the decedent was staying. A hotel manager subsequently found the decedent lying on the floor of the hotel. An ambulance was dispatched, and the decedent was declared deceased at the scene.

¶ 4 Upon learning of the death, the claimant authorized Tennessee officials to conduct an autopsy on the decedent in order to rule out foul play. According to the claimant, the decedent was not sick at the time of his death, but had suffered from chronic asthma for which he took over the counter medication. The decedent's fiancé, Cheryl Jeffries, testified that in telephone conversations she had with the decedent during his training, he stated that he had complained to Star about pain and

swelling in his leg, and also told Jeffries that he was "in the truck constantly and did not have access to the rest area of the cab of the truck." Jeffries also testified that she could hear the decedent wheezing in these conversations.

¶ 5 The only expert testimony in this case came from medical examiner Dr. Stacy Turner, who performed the autopsy on the decedent, and testified by deposition on behalf of the claimant. Dr. Turner testified that the decedent died in a natural manner and that his death was caused by a pulmonary embolism originating from deep vein thromboses of the leg. Most likely, a blood clot formed in his leg and traveled through his body and into the lungs, causing a pulmonary embolism. According to Dr. Turner, the exact cause of deep vein thrombosis (DVT) is not often known, but it could result from many different things, such as problems with the blood itself; problems with blood vessels or blood flow; injuries; hereditary predispositions; and stasis, which means being still for a long period of time. Dr. Turner testified that obesity and an enlarged heart are also risk factors, and that, based upon her examination, the decedent had a significantly enlarged heart and was obese. Dr. Turner indicated that sitting still for a continuous period of time could cause an abnormal blood clot to form, or result in the formation of additional clots if a clot was already in existence. Although Dr. Turner acknowledged that DVT could exhibit symptoms such as a swollen leg, she testified that the autopsy did not indicate that the decedent had any leg swelling. When asked about the likelihood that someone could develop DVT when being required to sit for days at a time, Dr. Turner responded that there is no way to tell, and that it would be different for each individual.

¶ 6 On cross-examination, Dr. Turner testified that she could not give an opinion as to whether the decedent's work activities led to his DVT or to the pulmonary embolism that ultimately caused

his death. She further indicated that she had no idea of the time sequence in which the blood clot formed or when it traveled through the decedent's body to cause the pulmonary embolism. Finally, she was unable to say that the prolonged sitting lead to the blood clot that caused the decedent's death in this case. According to Dr. Turner, she was not provided information as to the length of the decedent's employment as a truck driver or trainee or how much time he spent driving. She further indicated that she did not have any of the decedent's medical records prior to the occurrence.

¶ 7 On April 28, 2011, the arbitrator issued a decision finding that the claimant failed to prove that the decedent sustained an accident that arose out of and in the course of his employment, or that his death was causally related to any such occurrence. In her findings, the arbitrator noted that Dr. Turner "was unable to give an opinion as to whether the decedent's blood clot definitely formed based upon sitting too long while driving a truck." Consequently, the arbitrator denied benefits under the Act. On review, the Commission adopted the decision of the arbitrator.

¶ 8 The claimant sought judicial review of the Commission's decision in the circuit court of Tazewell County. The circuit court confirmed the Commission's decision, and this appeal followed.

¶ 9 On appeal, the claimant argues that the trial court erred in disregarding testimony by Dr. Turner that the decedent's long periods of sitting while driving his truck were possibly a causative factor leading to his DVT and subsequent death. In particular, she asserts that, when considering Dr. Turner's testimony, the trial court should have used a *de novo* standard, and should have drawn its own conclusions from the evidence presented. The claimant urges that this court also conduct a *de novo* review.

¶ 10 However, it is not the function of this court or the trial court to reconsider the evidence before

the Commission or to re-evaluate the testimony of witnesses. It is well-settled that the Commission is deemed in the best position to ascertain the credibility of witnesses and the weight to be given their testimony. *Long v. Industrial Comm'n.*, 76 Ill.2d 561, 565-66, 394 N.E.2d 1192 (1979). This is especially true with regard to medical testimony and evidence. *Id.*; *Fickas v. Industrial Comm'n.*, 308 Ill.App.3d 1037, 1041, 721 N.E.2d 1165, 1169 (1999). Where the credibility of a witness, and the inferences to be drawn from her testimony, is a determining issue, it is error for this court to conduct a *de novo* review. *Gilster Mary Lee Corp. v. Indus. Comm'n.*, 326 Ill. App. 3d 177, 184, 759 N.E.2d 979 (2001). Further, the question of whether a causal relationship exists between a claimant's employment and his injury is one of fact, and as such, is to be resolved by the Commission. *Sisbro, Inc. v. Industrial Comm'n.*, 207 Ill. 2d 193, 205-06, 797 N.E.2d 665 (2003); *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)), meaning that no rational trier of fact could have agreed with the outcome. *Dolce v. Industrial Comm'n.*, 286 Ill. App. 3d 117, 120, 675 N.E.2d 175 (1996). Whether the reviewing court may have drawn variant inferences or reached a different conclusion is immaterial; we must defer to the determination of the Commission as long as there is sufficient evidence to support it. *Benson v. Industrial Comm'n.*, 91 Ill. 2d 445, 450, 440 N.E.2d 90 (1982).

¶ 11 In order to obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered an injury which arose out of and in the course of his employment. *Sisbro*, 207 Ill. 2d at 203-04. In the "course of employment" refers to the time,

place and circumstances surrounding the injury, meaning that, generally, the injury must occur within the time and space boundaries of the employment. *Sisbro*, 207 Ill. 2d at 203. In this case, there is no dispute that the decedent was staying at the hotel as required by Star during his training drive, and thus that his injury occurred "in the course of" his employment.

¶ 12 To satisfy the "arising out of" requirement, " the claimant has the burden of proving that the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Sisbro*, 207 Ill. 2d at 203; *Cook County. v. Industrial Comm'n*, 68 Ill. 2d 24, 29-30, 368 N.E.2d 1292 (1977). Further, in cases where the employee had a pre-existing condition, he is entitled to recovery if his required duties lead to an aggravation of that condition. *Id.* However, liability under the Act cannot rest upon imagination, speculation or conjecture; it must be based upon facts affirmatively connecting the employee's duties as a cause of the resulting injury. *Cook County*, 68 Ill. 2d at 30, citing *Schroeder Iron Works v. Industrial Comm'n.*, 36 Ill.2d 519, 224 N.E.2d 233 (1967); *A. O. Smith Corp. v. Industrial Comm'n*, 33 Ill.2d 510, 211 N.E.2d 749 (1965).

¶ 13 Here, there is no basis to conclude that the Commission's determination was against the manifest weight of the evidence. Although Dr. Turner testified that prolonged sitting "could" be "a risk factor" for DVT in general, she enumerated multiple other potential risk factors that could lead to DVT as well, including obesity and an enlarged heart, all of which were unrelated to the decedent's employment. Dr. Turner was unable to pinpoint when the decedent's DVT may have begun or when the abnormal clot traveled through his body to cause his death. Finally, she was unable to state with a reasonable degree of medical certainty that the decedent's prolonged sitting was

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a cause of his DVT or pulmonary embolism in this case. Thus, the claimant failed to prove that the decedent's death arose out of and in the course of his employment.

¶ 14 For the foregoing reasons, we affirm the decision of the circuit court confirming the Commission's decision.

¶ 15 Affirmed.