

2014 IL App (3d) 130771WC-U
Workers' Compensation
Commission Division
Order Filed December 17, 2014

No. 3-13-0771WC

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 DISTRICT

TINA SOBERRI,)	Appeal from the Circuit Court
)	of LaSalle County.
)	
Appellee,)	
)	
v.)	No. 13-MR-48
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, <i>et al.</i> ,)	Honorable
)	Joseph P. Hettel,
(Bella's Family Restaurant, Appellant).)	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 judgment of the circuit court which set aside the decision of the Commission was reversed where the Commission's decision regarding causal connection was not against the manifest weight of the evidence.

¶ 2 The employer, Bella's Family Restaurant (Bella's), appeals from the circuit court order which set aside the decision of the Illinois Workers' Compensation Commission (Commission) denying the claimant, Tina Soberrri, benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)) because she failed to prove that her injury was causally

connected to her employment. For the reasons that follow, we reverse the judgment of the circuit court of LaSalle County and reinstate the decision of the Commission.

¶ 3 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on February 8, 2012.

¶ 4 The claimant testified that, on December 26, 2010, she left her waitressing position at Bella's, walked to her car, which was parked in the back of the Bella's parking lot, and slipped and fell on ice. There were no witnesses to her fall. According to the claimant, Bella's employees were instructed to park in the parking spaces furthest from the door, thereby leaving more convenient spaces for diners. She stated that she felt pain in her lower back immediately after the fall. When asked whether she had previously experienced any low back pain, the claimant testified that she "had a little bit from arthritis." She denied ever having medical treatment for low back pain, but stated that she had been prescribed pain medication in the past to treat her general arthritis pain. The claimant testified that the low back pain she experienced after the fall was much worse than any previous back pain she experienced from her arthritis. On December 27, 2010, the claimant reported the fall to another Bella's employee as she was unable to reach the owner.

¶ 5 On January 5, 2011, the claimant sought treatment for low back pain from her family physician, Dr. Ramon Inciong, who ordered lumbar and thoracic spine x-rays and prescribed a steroid pack and pain medication. Dr. Inciong excused the claimant from work between January 5 and January 21, 2011, "due to back pain after fall on ice." The x-rays, taken on January 6, 2011, showed no fractures.

¶ 6 On January 17, 2011, the claimant sought treatment at the St. Margaret's Hospital emergency room, reporting generalized back pain, from "neck down to tailbone," for three weeks, and that movement exacerbated the pain which radiated across her back. The emergency room notes stated that the claimant said that her pain began after falling on ice on December 26, 2010, and that the pain initially improved but then worsened. She reported that Dr. Inciong prescribed steroids, but the medicine was not relieving the pain. She also told the emergency room personnel that she was severely depressed and wanted to be admitted because she was afraid she "may do something."

¶ 7 Regarding the claimant's January 17 through January 19, 2011, hospitalization, Dr. Inciong stated in his discharge report dated January 20, 2011, that the claimant was "admitted to the hospital complaining of severe back pain" and severe depression. He indicated that the claimant "fell on the ice three weeks ago and has had increasing pain in the lower back and the neck area since then." His report states that the "pain in [the claimant's] back [] radiate[s] down both legs" and the "neck pain kind of radiates into both shoulders." Dr. Inciong noted that the claimant's "rheumatoid arthritis has been fairly well controlled," and he prescribed Ativan and Dilaudid for her back pain upon discharge.

¶ 8 On January 21, 2011, the claimant saw Dr. Inciong, reporting that the Dilaudid helped her back pain and the Ativan helped her anxiety. She told him that she was not suicidal, "[e]specially now that her pain is controlled." Dr. Inciong ordered MRI exams of the claimant's lumbar and cervical spine, which were performed on January 24, 2011. The lumbar spine MRI exam revealed disc desiccation and bulging with "annular tear or chronic ingrowth of granulation

tissue at L5-L6" and "very mild disc bulging L3-L4 and L4-L5 of doubtful clinical concern." The cervical spine MRI exam revealed "[r]eversal of cervical lordosis suggesting spasm," "[d]isc desiccation and bulging [at] C4-C5 and C5-C6" but without "neural foraminal narrowing or AP canal narrowing and "contact of the cord with slight flattening at C4-C5" but "no myelomalacia." On January 31, 2011, Dr. Inciong ordered that the claimant remain off work for "at least another 2 weeks."

¶ 9 On February 18, 2011, the claimant again saw Dr. Inciong, complaining of persistent low back pain. The claimant reported that she had been unable to work since her fall on December 26, 2010, and had been terminated by Bella's. Dr. Inciong noted that the claimant was "going to need to remain off work," and he prescribed prednisone for the pain. He also noted that, if the claimant's symptoms persisted, he would refer her for a neurosurgical consult and possible epidural steroid injections.

¶ 10 On March 16, 2011, the claimant started working as a cashier for Illinois Valley Food Center. She did not recall whether any doctor had restricted her work-duty level, but she stated that she could not tolerate standing on her feet all day. Illinois Valley Food Center accommodated the claimant by placing her in a position that allowed her to alternate sitting and standing. However, the claimant testified that her hours were cut in half as a result.

¶ 11 On March 25, 2011, the claimant treated with Dr. Inciong, again reporting persistent back pain and neck pain despite taking daily pain medication. She told him that the pain was worse in the lower back than the neck and that she wanted to consult a neurosurgeon. According to Dr. Inciong, the neurosurgical evaluation was delayed because of a lack of insurance approval.

¶ 12 On May 18, 2011, at the request of Bella's, Dr. J.S. Player evaluated the claimant's medical records and reported that his diagnosis was "[l]umbar spine and cervical spine nonradicular soft tissue strains caused by the 12/26/10 falling incident." He opined that, based upon the claimant's history of low back pain and Percocet needs, the "12/26/10 falling incident caused a soft tissue lumbar strain but did not aggravate the subject's chronic and preexisting lumbar spine degenerative condition." Dr. Player further stated that there was "no causal relationship between the L5-L6 annular tear documented on the 01/24/11 lumbar spine MRI with the 12/26/10 falling incident." He also noted that the MRI also indicated chronic ingrowth of granulation tissue which is consistent with degenerative disc disease caused by rheumatoid arthritis. Dr. Player opined that the claimant reached maximum medical improvement (MMI) on January 4, 2011, and that she required no further treatment after that date. He specifically opined that the January 17, 2011, hospitalization "was not the result of, related to, caused by or aggravated by the 12/26/10 falling incident," noting that the claimant reported to emergency room personnel that her symptoms after the fall had initially improved.

¶ 13 Regarding the claimant's cervical spine injury, Dr. Player noted that she had no history of cervical spine complaints, but that her symptoms became better and then "inexplicably worsen[ed]" on January 4, 2011. In his opinion, "the 12/26/10 falling incident caused an indirect cervical spine soft tissue strain but that accident neither caused nor aggravated the [claimant's] preexisting cervical spine degenerative condition." Dr. Player did not believe that the January 17, 2011, hospitalization was related to the claimant's cervical spine, and he was of the opinion that she did not require treatment for her cervical spine after reaching MMI on January 4, 2011.

¶ 14 On Dr. Inciong's referral, the claimant saw Dr. Mark Lorenz on May 26, 2011, who noted that the claimant gave a history of having fallen on icy pavement on December 26, 2010, resulting in persistent neck and back pain which prevented her from working at full-duty level. According to Dr. Lorenz, the claimant complained of neck pain, radiating into her right scapula with some patches of numbness, and low back pain, and that she denied having such pain before the fall. After reviewing her prior MRI exams and new x-rays performed in his office, Dr. Lorenz diagnosed the claimant with "C4-5, C5-6 spondylosis with disc bulging and axial neck pain" and "L4-5 annular tear with small central disc herniation and axial back pain." He recommended that the claimant continue taking the pain medications prescribed by Dr. Inciong and begin physical therapy treatment, which she received through ATI Physical Therapy. Dr. Lorenz further restricted the claimant to lifting a maximum of 25 pounds.

¶ 15 On July 18, 2011, the claimant saw Dr. Lorenz, reporting that the physical therapy treatment was not helping her pain. Dr. Lorenz recommended that she continue taking her pain medications and following the 25-pound lifting restriction, and he referred her for a discogram study to determine whether surgical intervention would be appropriate.

¶ 16 On July 26, 2011, Dr. Neeraj Jain performed a lumbar discography exam on the claimant, which revealed that she had "discogenic pain emanating from L4-5 with control levels at L2-3, L3-4 and L5-S1."

¶ 17 The claimant next saw Dr. Lorenz on August 1, 2011. Dr. Lorenz reviewed the discogram study and discussed with the claimant that she had two options: (1) surgical discectomy and stabilization at L4-L5; or (2) accept her current disability and proceed with a

functional capacity exam (FCE). Dr. Lorenz released the claimant to work with a 10-pound maximum lifting restriction, no bending, and alternating between sitting and standing, pending the results of an FCE.

¶ 18 Dr. Lorenz testified that, while the claimant "probably had some preexisting degenerative changes in the cervical spine," those changes were aggravated by the fall. Regarding the lumbar spine condition, Dr. Lorenz testified that the fall described by the claimant was "a competent cause to create central or any disc herniation in the lumbar spine as well as annular tears and render them symptomatic." He believed that surgical intervention would be related to her fall, because the claimant had not previously sought treatment for the low back pain which she now complained. On cross-examination, Dr. Lorenz admitted that he factored in the claimant's history of the fall when making a causation conclusion.

¶ 19 On August 31, 2011, Dr. Player examined the claimant at the request of Bella's. He reported that the claimant's cervical spine range-of-motion was functionally normal and that she had no tenderness in the lower lumbar spine. Dr. Player noted that the "pain status inventories indicate a moderate propensity for symptom magnification and overstatement of pain." He diagnosed the claimant with "nonradicular axial cervical spine and lumbar spine pain." Dr. Player stated that his review of the claimant's updated medical records and his examination of her did not affect his earlier opinions.

¶ 20 The claimant testified that she wanted to proceed with the recommended surgery, but that she does not have medical insurance and needs authorization from Bella's insurer to have it performed. She stated that she suffers from daily back pain.

¶ 21 On cross-examination, the claimant denied having been treated for low back pain in the past, other than for general pain caused by her rheumatoid arthritis. She admitted that she had been prescribed Darvocet and Percocet in the past, but insisted those medications were prescribed to treat her arthritic pain. She also did not recall using a TENS unit in the past for low back pain.

¶ 22 Bella's introduced medical records which predated the claimant's fall to establish that she had a preexisting lumbar spine condition. A September 13, 2002, treatment note from Dr. Inciong stated that the claimant reported "pain in the lower back and numbness running down the leg," which was not due to any trauma but possibly the heavy lifting she did at work. Dr. Inciong prescribed Darvocet to treat the pain and ordered x-rays, which showed "some straightening of the lumbosacral spine which is probably on the basis of muscle spasm."

¶ 23 In a June 29, 2007, treatment note, Dr. Dipti Doshi, the claimant's rheumatologist, ordered her to stop taking Darvocet, begin taking Vicodin and continue taking Relafen. He noted that most of the claimant's arthritic pain involved her hands, wrists and knees.

¶ 24 Other medical records refer to the claimant's general low back pain in conjunction with her rheumatoid arthritis, including records dated: January 30, 2008, which state that Dr. Inciong prescribed Percocet; June 27 and November 19, 2008, which noted the claimant's Percocet refills; February 20, 2009, which contain Dr. Inciong's recommendation that the claimant continue using a TENS unit and taking Percocet to control her low back pain; May 22, July 10, and September 25, 2009, which noted continuation of her Percocet prescription to treat chronic pain due to arthritis; and April 9, June 23, July 16, and November 12, 2010, which reflect that

Dr. Inciong recommended that the claimant continue Percocet to treat her pain. We note that many of the primary reasons for the claimant's medical visits were not related to low back pain and that many of the records state the claimant denied numbness, tingling or radiating pain symptoms. None of the medical records refer to any neck or cervical spine pain.

¶ 25 Following a hearing, the arbitrator awarded the claimant temporary total disability (TTD) benefits, medical expenses, and prospective medical expenses under section 8 of the Act (820 ILCS 305/8 (West 2010)). Specifically, the arbitrator ordered that Bella's pay the claimant's outstanding medical bills (\$14,372.04), pay for prospective medical care in the form of the lumbar spine surgery recommended by the claimant's treating orthopedic physician, and awarded TTD benefits in the amount of \$190.00 per week for the 10-week period between January 6, 2011, and March 17, 2011 (the date which the claimant started her lighter duty employment).

¶ 26 Bella's sought a review of the arbitrator's decision before the Commission. On January 28, 2013, the Commission, with one commissioner dissenting, reversed the arbitrator's award of benefits, finding that the claimant failed to prove a causal connection between her condition and her employment. In its decision, the Commission stated that it did not find the claimant's testimony credible on the issue of whether she had a preexisting low back condition. The dissenting commissioner opined that, while the claimant may have had a preexisting low back condition, the evidence, namely the causation testimony of the medical experts, demonstrated that her fall at work worsened the low back condition and triggered a cervical spine condition, necessitating more aggressive treatment.

¶ 27 The claimant sought judicial review of the Commission's decision in the circuit court of LaSalle County. On September 12, 2013, the circuit court set aside the Commission's decision and reinstated the arbitrator's award. The court stated that it agreed with the dissenting commissioner in that, regardless of whether the claimant had a preexisting lumbar spine condition, the medical experts agreed that the workplace fall either caused a new condition or exacerbated the existing one. Bella's now appeals.

¶ 28 To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that she has suffered an injury which arose out of and in the course of his employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill.2d 193, 203-04 (2003); *Village of Villa Park v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 130038WC, ¶19. Compensation may be awarded for a claimant's condition of ill-being even though the conditions of her employment do not constitute the sole, or even the principal, cause of injury. *Fierke v. Industrial Comm'n*, 309 Ill. App. 3d 1037, 1040 (2000). "[T]he question of whether a claimant's disability is attributable to a degenerative condition or, because of an accident, to an aggravation of a preexisting condition, is a question of fact to be decided by the [] Commission" (*Caterpillar Tractor Co. v. Indus. Comm'n*, 92 Ill. 2d 30, 36-37 (1982)), and its resolution of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence (*Orsini v. Industrial Comm'n*, 117 Ill.2d 38, 44, (1987)). For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992). Put another way, the Commission's determination on a question of fact is against the manifest weight of the evidence when no rational trier of fact could have agreed. *Dolce v. Industrial Comm'n*, 286 Ill. App. 3d

117, 120 (1996). Moreover, "to the extent that the medical testimony might be construed as conflicting, it is well established that resolution of such conflicts falls within the province of the Commission, and its findings will not be reversed unless contrary to the manifest weight of the evidence." *Caterpillar Tractor*, 92 Ill. 2d at 37.

¶ 29 In this case, we cannot find that the Commission's conclusion, that the claimant's current condition of ill-being was not causally connected to her employment, is contrary to the manifest weight of the evidence. While Dr. Player acknowledged that the claimant's fall caused lumbar and cervical spine strains, he opined that those injuries resolved as of January 4, 2011, and that her current condition of ill-being is attributable to the degenerative changes of her arthritic condition. Dr. Player supported his opinion with reference to the claimant's MRI which stated she had either an annular tear or chronic ingrowth of granulation tissue, which he stated was consistent with her history of rheumatoid arthritis. While Dr. Lorenz provided a conflicting opinion in this regard, namely that the fall aggravated preexisting degenerative changes in her cervical and lumbar spine, the resolution of such conflicting medical opinions fell within the province of the Commission. Based upon Dr. Player's opinion, we are unable to conclude that the Commission's decision finding that the claimant failed to prove a causal connection between her condition of ill-being and her fall on December 26, 2010, and its denial of her claim for benefits under the Act are against the manifest weight of the evidence. Accordingly, we reverse the circuit court's judgment which set aside the Commission's decision and reinstate the decision of the Commission.

¶ 30 Circuit court judgment reversed; decision of the Commission reinstated.