

2014 IL App (5th) 130186WC-U

NO. 5-13-0186WC

Order filed May 8, 2014

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

STEVEN ANDERSON,)	Appeal from the
)	Circuit Court of
Appellant,)	Washington County.
)	
v.)	No. 12-MR-12
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, et al.,)	Honorable
)	Daniel J. Emge,
(Bechtel Construction, Appellee).)	Judge, presiding.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hudson and Stewart concurred in the judgment.
Justice Harris dissented.

ORDER

- ¶ 1 *Held:* The Illinois Workers' Compensation Commission's finding that the claimant's injury was not causally connected to his workplace accident was reversed where the finding was against the manifest weight of the evidence.
- ¶ 2 The claimant, Steven Anderson, appeals the circuit court order which confirmed the decision of the Illinois Workers' Compensation Commission (Commission) finding no causal

connection between his left shoulder injury and his employment with Bechtel Construction (Bechtel). For the following reasons, we reverse the circuit court judgment which confirmed the Commission's decision, and reverse the Commission's decision denying the claimant benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)) and remand for further proceedings.

¶ 3 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on June 8, 2011.

¶ 4 The claimant testified that, for about 4½ years, he had worked as a boilermaker, which is primarily a heavy construction position involving welding, cutting metal, using chain falls, chainsaws, and port-a-powers. He stated his position required him to climb and work in confined areas and required him to be in good physical shape. The claimant testified that, on June 11, 2009, he saw Dr. David Mitchell for some posterior shoulder pain, and he was advised to take some anti-inflammatory medication. Dr. Mitchell's treatment note dated June 11, 2009, stated "missed 1 day of work sec. to L posterior scapulae pain x 2 days," "no known trauma; heat/ice help. stretching helps pain," "leftover nsoids and muscle relaxant from 12/08 MVA and will try for L shoulder pain." The claimant missed two days of work because of his appointment and the pain, but he then returned to his boilermaker position as the pain had resolved. The claimant denied having any additional problems with his shoulder before or after that point, but he did see Dr. Mitchell for other reasons. Regarding a December 2008 automobile accident in which he was involved, the claimant denied that his shoulder was injured at that time and there is no evidence contradicting his testimony.

¶ 5 On June 20, 2009, the claimant saw Dr. Mitchell for anxiety symptoms, but there was no mention of shoulder pain other than "hypertension benign. pain shoulder" in the patient history

section. On July 1, July 16, and July 22, 2009, the claimant saw Dr. Mitchell with gastrointestinal symptoms, and "pain shoulder" remained listed in the patient history section but not mentioned otherwise. The claimant testified that during these visits, he did not complain of shoulder pain to Dr. Mitchell.

¶ 6 The claimant testified that, on July 27, 2009, he was working at a construction site, raising guillotine dampers with chain falls. He described the dampers as 5' x 8' x 1' heavy steel frames, likely weighing over one ton, and that, in order to move them, he had to pull the chain falls using a "hand over hand" overhead motion. He performed this task along with several other coworkers. Each pull moved the damper about one-quarter inch, and the damper was moved a total of 10 to 15 feet. The claimant estimated that moving the damper required maybe two to three thousand pulls, and that they had moved several dampers over several days' time. After performing this task, the claimant felt fatigued and "felt something in [his] arm," "like [he] pulled something," and his left shoulder began hurting. He thought he pulled a muscle, but he continued working. The claimant worked the next day, but left early because he had planned to leave for a vacation the next day. He still had pain in his shoulder, but he worked until noon and believed the pain would resolve while on vacation. He admitted that he did not report the injury that day or the day before to anyone at work.

¶ 7 While on his 10 or 11-day vacation, the claimant's shoulder pain continued, and upon returning, he took off work to see Dr. Mitchell. The claimant testified that he informed Dr. Mitchell about the chain-pull work and the pain he experienced while performing the work and thereafter. Dr. Mitchell's office visit note, dated August 11, 2009, states that the claimant "missed work" and he reported "3-4 weeks L shoulder hurting, worse with hoisting some kind of chain at work; no specific episode of L shoulder trauma/damage, uses a pulley chain." The note

further states that the claimant had a "sore deltoid and biceps tendon in L shoulder close to AC. ROM stiff L shoulder and pops/clicks." Dr. Mitchell ordered an x-ray and advised the claimant to take ibuprofen, rest, and ice and stretch his shoulder. The August 11 x-ray exam was normal.

¶ 8 The claimant testified that, when he returned to work the next day, his boss, Jimmie Johnson, made a comment about taking an extra day off after a long vacation. The claimant stated that he then told Johnson that he went to the doctor because his shoulder still hurt from moving the dampers two weeks earlier. He testified that, after he returned from vacation, he missed some work because of his shoulder pain.

¶ 9 On August 17 and August 22, 2009, Dr. Mitchell noted that the claimant's left shoulder had been hurting for four weeks and was slightly better with two days of rest, ice, and ibuprofen. He diagnosed the claimant with "biceps tenodinitis." On September 2, 2009, Dr. Mitchell wrote that the claimant reported "worsening of L shoulder pain w/o specific incident, uses [shoulder] daily home and work." On September 11, Dr. Mitchell saw the claimant for "L shoulder pain after work but no specific incident, multiple days lifting a chain." The claimant also reported numbness and tingling. Dr. Mitchell ordered an MRI of the left shoulder.

¶ 10 On September 21, 2009, the claimant reported to Dr. Mitchell that he could no longer lift his arm without pain. Dr. Mitchell referred the claimant to Dr. Steven Morton because his MRI showed a torn rotator cuff. He also wrote the claimant a note, authorizing him to be off work for the next two weeks. The September 16 MRI report states that there was a "4 mm focal complete tear in the anterolateral aspect of the supraspinatus tendon," and "a partial tear in the articular surface of the supraspinatus tendon [was] also present measuring 14 mm in length."

¶ 11 The claimant testified that, on September 25, he saw Dr. Morton, who explained that he needed surgery to repair the rotator cuff tendon. Dr. Morton reported that the claimant was

working with a chain wrench on July 27 and stated that he was "not sure if it [was] just the repetitive motion or if it [was] just too heavy, but he felt like he pulled a muscle." He thought the pain would resolve while on vacation, but it did not. Dr. Morton advised the claimant that he was a good surgical candidate for rotator cuff repair surgery.

¶ 12 The claimant sought a second opinion from Dr. Rick Wright on October 26, 2009, who agreed that he needed surgery. Dr. Wright testified that the claimant reported that he had left shoulder pain after pulling a heavy chain at work in July. Dr. Wright performed arthroscopic surgery on the claimant on November 24, 2009. Dr. Wright testified the MRI was not totally accurate as the claimant did not have a full-thickness rotator cuff tear, but he had some fraying of the tendon, rotator cuff tendinitis, and inflammation in the subacromial space. Dr. Wright performed an arthroscopic subacromial decompression which cleaned out the bursa to create more space for the rotator cuff and relieve the tendonitis symptoms. He stated that his postoperative diagnosis was "left shoulder superior labral fraying and left shoulder rotator cuff tendinitis," which in layman's terms was "bursitis, inflammation, [and] pain with use of the rotator cuff," due to inflammation surrounding the rotator cuff. Dr. Wright stated that injuries, overuse, falls, or trauma can cause inflammation surrounding the rotator cuff and fraying around the labral, which is where the biceps tendon attaches to the shoulder socket. According to Dr. Wright, the claimant's condition could have been caused by the chain-pulling motion that he described. He also agreed that the chain-pulling motion could have aggravated a preexisting shoulder condition. Dr. Wright admitted that rotator cuff tears may be caused by wear-and-tear or an acute incident and "it's usually an incident." He admitted that fraying may also develop over time with the normal aging process. After the surgery, the claimant received physical

therapy treatment through March 2010, and he regained full range-of-motion in his shoulder. Dr. Wright released him back to work on April 3, 2010.

¶ 13 On cross-examination, the claimant admitted that he did not inform Dr. Wright or Dr. Morton about the pain he experienced in June 2009, explaining that he forgot about that visit because his pain had resolved after two days.

¶ 14 At the request of Bechtel, Dr. Richard Rende examined the claimant on July 19, 2010. Dr. Rende testified that the claimant provided details of his injury on July 27, 2009, including the chain-pulling overhead motion work, but he denied having problems with his shoulder before that date. Through the claimant's medical records, Dr. Rende discovered that the claimant had reported pain in his shoulder to Dr. Mitchell on June 11, 2009. He also reviewed records from Dr. Mitchell from June 20, July 1, July 16, and July 22, which indicated the claimant had left shoulder pain. In reviewing the claimant's surgical records, Dr. Rende noted that Dr. Wright's surgical report did not find a rotator cuff tear but rather a "subacromial impingement from his acromioclavicular spur," and "fraying" of the rotator cuff tendon. Dr. Rende opined that the claimant's condition, based on his medical records, predated the alleged July 27, 2009, injury. He testified that the claimant's condition was typically one of a "longstanding nature" as it would take months or years for the fraying to occur as a result of the spur formation. Dr. Rende agreed that the surgical procedure performed by Dr. Wright was a reasonable and necessary treatment for the claimant's condition.

¶ 15 On cross-examination, Dr. Rende explained that fraying occurs where a spur has formed when the shoulder is moved, often through repetitive overhead work, and the supraspinatus tendon and the bursa sac become inflamed. He also explained that oftentimes, when rotator cuff pathology initiates, pain is felt in the posterior shoulder, as the claimant described to Dr. Mitchell

on June 11, 2009. Dr. Rende admitted that Dr. Mitchell's notes from June 20, July 1, July 16, and July 22, 2009, did not indicate that left shoulder pain was discussed in the office visit portion of the record and that no mention of popping or clicking in the shoulder occurred until after July 27. He also admitted that the chain-pulling motion that the claimant described involved repetitive overhead shoulder work and that such work could aggravate a preexisting condition of subacromial impingement, causing the condition to become symptomatic.

¶ 16 Following the hearing, the arbitrator denied temporary total disability (TTD) benefits (820 ILCS 305/8 (West 2008)), finding that the claimant's injury was not causally related to his employment. The arbitrator noted that the claimant alleged he suffered a specific injury on July 27, 2009, but his medical records demonstrated he had ongoing shoulder pain for three to four weeks before that date and that it was "not until the [claimant] saw Dr. Wright on October 26, 2009 that [he] gave a history of a specific injury causing his pain, nearly 3 months after the accident date and after [he] had gone on a 10 day vacation." The arbitrator discounted Dr. Wright's causation opinion because he was unaware of the claimant's shoulder complaints predating July 2009. Rather, the arbitrator found Dr. Rende's opinions more credible because he had the claimant's complete medical history.

¶ 17 The claimant sought review before the Commission. On September 4, 2012, the Commission affirmed and adopted the decision of the arbitrator.

¶ 18 The claimant then sought judicial review of the Commission's decision in the circuit court of Washington County. On March 19, 2013, the circuit court confirmed the decision of the Commission.

¶ 19 The claimant now appeals, arguing that the Commission erred in finding that his shoulder injury was not caused by the July 27, 2009, workplace incident. He argues that the undisputed

evidence establishes that his shoulder became symptomatic as a result of his chain-pulling the dampers on July 27. The claimant argues that his medical records are consistent with his injury as he did not have any persistent shoulder pain before July 27 and, even if he had a preexisting condition in his shoulder, both physicians testified that the chain-pulling work could have aggravated it, causing it to be symptomatic. We agree with the claimant.

¶ 20 In a workers' compensation case, the claimant has the burden of proving, by a preponderance of the evidence, all of the elements of his claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221 (1980). Whether a causal relationship exists between a claimant's employment and his injury is a question of fact to be resolved by the Commission, and its resolution of such a matter will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244, 461 N.E.2d 954 (1984). In resolving such issues, it is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *O'Dette*, 79 Ill. 2d at 253. 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, 591 N.E.2d 894 (1992). Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's determination of a question of fact is supported by the manifest weight of the evidence. Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450, 440 N.E.2d 90 (1982).

¶ 21 To recover under the Act, the claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671-72

(2003). Here, there is no dispute as to whether the claimant's actions on July 27 arose out of and in the course of his employment; rather, Bechtel argued, and the Commission agreed, that the claimant's shoulder condition predated the July 27 accident.

¶ 22 In cases involving preexisting conditions, "recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury and not simply the result of a normal degenerative process of the preexisting condition." *Id.* at 204-05. "When workers' physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment." *General Electric Co. v. Industrial Comm'n*, 89 Ill. 2d 432, 434, 433 N.E.2d 671 (1982). "Thus, even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor." *Sisbro, Inc.*, 207 Ill. 2d at 205. Furthermore, the accidental injury need not be the sole, or even primary, causative factor, so long as it was a causative factor in the resulting condition of ill-being. *Id.* Whether a claimant's condition is attributable solely to a degenerative process of the preexisting condition or to an aggravation or acceleration of a preexisting condition because of an accident is a factual determination to be decided by the Commission. *Id.* On review, we will not disturb the Commission's factual findings unless they are against the manifest weight of the evidence. *Id.* at 206. Although we are reluctant to set aside the Commission's decision on a factual question, we will not hesitate to do so when the clearly evident, plain, and indisputable weight of the evidence compels an opposite conclusion. *Montgomery Elevator Co. v. Industrial Comm'n*, 244 Ill. App. 3d 563, 567, 613 N.E.2d 822 (1993).

¶ 23 In this case, we determine that the Commission's finding, that the claimant's current shoulder condition was not causally connected to his July 27, 2009, workplace accident, is against the manifest weight of the evidence. The Commission based its decision on the evidence that: the claimant had reported shoulder pain to Dr. Mitchell on June 11, 2009; Dr. Mitchell noted on August 11, 2009, that the claimant had suffered shoulder pain for three to four weeks before hoisting the dampers on July 27; Dr. Wright's opinion was not as credible as Dr. Rende's where Dr. Wright did not know of the claimant's June 11 treatment; and Dr. Rende's opinions were more credible because he had the claimant's complete medical record. Regardless of whether the claimant's shoulder condition started on June 11, it is undisputed that the claimant's symptoms worsened and persisted after he hoisted the dampers on July 27. Further, both Dr. Wright and Dr. Rende agreed that the claimant's overhead chain-pulling work on July 27 could have aggravated a preexisting shoulder condition and caused it to become symptomatic. The claimant's medical records establish that the shoulder pain he experienced on June 11 had not required further treatment while the shoulder pain he experienced on and after July 27 persisted, worsened over time, and prevented him from working. As stated, the claimant's accident need not be the sole or primary cause, but it must only be *a* cause, and here the evidence is undisputed that the claimant's work on July 27 either caused or aggravated a preexisting condition in his shoulder.

¶ 24 Based on the foregoing reasons, we reverse the circuit court judgment which confirmed the Commission's decision finding the claimant's condition of ill-being was not caused by the workplace accident, and we reverse the Commission's decision denying the claimant benefits under the Act and remand the cause to the Commission for further proceedings.

¶ 25 Circuit court reversed, Commission's decision reversed, and cause remanded to the Commission.

¶ 26 JUSTICE HARRIS, dissenting:

¶ 27 I respectfully dissent. Given the evidence in this case and the deference to be accorded the Commission's findings of fact, I do not believe its determination that the claimant's current shoulder condition was not causally related to his July 27, 2009, work place accident was against the manifest weight of the evidence. More specifically, while I agree Dr. Rende testified the claimant's overhead chain-pulling work could have aggravated a preexisting shoulder condition and caused it to become symptomatic, he qualified his opinion by saying this would be true if the claimant had no prior shoulder symptoms. Dr. Rende further testified that on June 11, 2009, the claimant in fact complained to Dr. Mitchell of left shoulder symptoms. Dr. Rende testified, "I don't believe there's any question based on a review of the record that this gentleman's condition and symptoms predated the July 27, 2009 injury." Dr. Wright was not aware of the claimant's prior shoulder complaints. Dr. Rende's opinions do not support the claimant's theory of an aggravation. The Commission found Dr. Rende's opinions were more credible than Dr. Wright's. I do not believe its factual determination as to causation was against the manifest weight of the evidence. I would affirm.