

No. 1-13-2560WC

**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).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST DISTRICT

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EUSEVIO SANCHEZ,	)	Appeal from the Circuit Court
	)	of Cook County.
	)	
Appellant,	)	
	)	
v.	)	No. 12-L-50855
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, <i>et al.</i> ,	)	Honorable
	)	Eileen O'Neil Burke,
(Field Container Corporation, Appellee).	)	Judge, Presiding.

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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 was affirmed where the Commission's decision finding that the claimant failed to prove that he suffered an injury which arose out of and in the course of his employment was not against the manifest weight of the evidence.

¶ 2 The claimant, Eusevio Sanchez, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2006)), seeking benefits for injuries he allegedly received while working for Field Container Corporation (Field). He

now appeals from the circuit court order which confirmed the decision of the Illinois Workers' Compensation Commission (Commission) finding that he failed to prove that he suffered an injury which arose out of and in the course of his employment with Field. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 The following factual recitation is taken from the evidence adduced at the arbitration hearing.

¶ 4 On October 20, 2006, the claimant was employed by Field as a laborer. He testified that, while working on that date, his left foot became caught between two pallets. According to the claimant, he experienced immediate pain in his left foot. He stated that two of his co-workers, Enrique Yanez and Vincent Salgado, were in the area when he was injured. The claimant testified that he reported the incident to his supervisor, Arsenio Fernandez, but sought no medical treatment and continued working as he thought his injury was minor and feared losing his job. The claimant stated that, by the end of his work shift, he was in pain and was limping, although his foot was not swollen.

¶ 5 Yanez testified that he was working in the same general area as the claimant on October 20, 2006, and observed him working. He stated that he saw nothing unusual about the way that the claimant was walking during his work shift or at the end of the day.

¶ 6 The claimant sought no medical care after completing work on October 20, 2006. The following day, on October 21, 2006, at 1:00 a.m., the claimant flew to Mexico for a pre-arranged vacation. He estimated that the flight was 3 ½ to 4 hours in length. The claimant testified that, by the time he arrived in Mexico, the pain in his left foot had increased and spread to his left calf. On the day of his arrival in Mexico, the claimant sought medical care from Dr. J. Mercedes

Cancino Cisneros. Dr. Cisneros administered an injection for pain, prescribed aspirin and ginkgo bilobo, and advised the claimant to rest.

¶ 7 The claimant testified that he returned to see Dr. Cisneros on October 23, 2006, still complaining of left foot pain. According to the claimant, Dr. Cisneros advised him that the problem was serious and could result in the amputation of his foot. Dr. Cisneros advised the claimant to return to the United States and seek medical attention as soon as possible.

¶ 8 In a written report of his treatment of the claimant, Dr. Cisneros noted that the claimant is a diabetic and that he treated him with hypoglycemic agents for complaints of pain in his left foot and toes. According to the report, the claimant's pain was initially mild, but after two days it became "intense, cramping claudicant and radiated to the calf of the left leg." The claimant admitted that he never told Dr. Cisneros that he had sustained an injury while working.

¶ 9 The claimant returned to the United States on October 25, 2006. He presented at MacNeal Hospital that same day. The records of that visit reflect the claimant was found to have no pulses in his left lower extremity, numbness in his left leg from the knee down, and an inability to move his left leg. A history of diabetes mellitus and months of claudication with arterial occlusion was noted. The claimant was found to have bilateral outflow disease, significant thrombus in the left common iliac and external iliac artery, and thrombotic occlusion of the left superficial femoral artery. He underwent an embolectomy to re-establish blood flow to his left leg. Although blood flow was re-established, the claimant suffered neurological damage, foot drop, and necrosis of the muscles in his lower left leg.

¶ 10 The claimant remained hospitalized, and on October 26, 2006, he underwent a left thigh fasciotomy. On November 3 and November 7, 2006, the claimant underwent debridement

procedures. The claimant was found to have complete necrosis of the anterior compartment muscle of his left leg, and on November 10, 2006, his left leg was amputated above the knee.

¶ 11 Although the claimant testified that he told the physicians who treated him at MacNeal hospital of his work injury, there is no mention of a work injury, or any acute injury to his left foot, in the records of MacNeal Hospital from October 25, 2006, through the day of his discharge on November 14, 2006.

¶ 12 Post-operatively, the claimant underwent extensive physical therapy at several institutions and came under the care of a number of physicians. However, the very first reference in any of the claimant's medical records to his having sustained a work-related accident appears in the note of a visit on December 20, 2006, to Scheck & Sirees Advanced Orthotics & Prosthetics. At that visit, a therapist recorded that the claimant "also states w/c accident in which the (L) foot & ankle got stuck & Pt experienced cramping."

¶ 13 Contained within the record are Dr. Vittorio Canterino's office notes of medical treatment rendered to the claimant prior to his alleged work accident on October 20, 2006. Dr. Canterino's notes of a visit on August 20, 2006, reflect that the claimant complained of burning in both feet and pain in the posterior aspect of his buttocks, extending down to his ankle. The doctor noted that the claimant was a non-insulin dependent diabetic, and he diagnosed bilateral diabetic neuropathy and bilateral sciatica. He recommended hydrotherapy, wax treatment and injections of vitamin B-12.

¶ 14 When the claimant was seen by Dr. Canterino on September 9, 2006, he reported that the B-12 injections reduced his pain and the inflammation in his feet, but that his neuropathic pain was returning along with tingling and numbness in both feet. The claimant returned to see Dr.

Canterino on September 24, 2006 and October 10, 2006, each time reporting that the B-12 shots which he received reduced his pain and discomfort. The doctor's notes of the October 10, 2006, visit, the last time the claimant saw Dr. Canterino prior to his alleged work accident, again contain a diagnosis of diabetic neuropathy and bilateral sciatica.

¶ 15 On April 28, 2008, at the request of his own attorney, the claimant was examined by Dr. Rajeev Garapati, an orthopedic surgeon. Dr. Garapati wrote two reports of his examination and records review. Although both reports are dated April 28, 2008, the doctor admitted during his deposition that one was dictated on April 30, 2008, and the other on May 19, 2008. Dr. Garapati opined, within a reasonable degree of medical certainty, that the claimant's injury at work exacerbated his peripheral vascular disease and diabetes, ultimately resulting in the amputation of his left leg above the knee. Dr. Garapati explained that the claimant likely suffered a soft tissue injury to his left foot when it was caught between the pallets at work which "caused inflammatory mediators to be released and caused the final ischemia to take place." Dr. Garapati testified that his opinion was based, in part, on the fact that the claimant was ambulatory and able to perform his work until October 20, 2006, when he was injured and had difficulty walking.

¶ 16 On December 15, 2010, the claimant was examined at the request of Field by Dr. Walter J. McCarthy, a cardiovascular surgeon. Following his examination of the claimant and a review of his medical records, Dr. McCarthy was unable to state with medical certainty the cause of the ischemia that led to the amputation of the claimant's left leg. According to Dr. McCarthy, the doctors who performed the amputation would be in the best position to determine the cause of the thrombosis, but he did state that "a minor foot injury is very unlikely to have caused an iliac and femoral artery thrombosis."

¶ 17 Following the hearing held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2010)), the arbitrator found that the claimant suffered injuries which he sustained as the result of an accident that arose out of and in the course of his employment with Field on October 20, 2006. The arbitrator awarded the claimant 31 3/7 weeks of temporary total disability (TTD) benefits and ordered Field to pay \$294,270.71 for medical services rendered to the claimant. Additionally, the arbitrator found that the claimant was not entitled to vocational rehabilitation benefits.

¶ 18 Field filed for a review of the arbitrator's decision before the Commission. In a unanimous decision, the Commission reversed the arbitrator, finding that the claimant failed to prove that he sustained accidental injuries which arose out of and in the scope of his employment with Field on October 20, 2006, and denied the claimant benefits under the Act.

¶ 19 The claimant sought a judicial review of the Commission's decision in the Circuit Court of Cook County. The circuit court confirmed the Commission's decision, and this appeal followed.

¶ 20 The claimant argues that the Commission's finding that he failed to prove that he sustained accidental injuries which arose out of and in the scope of his employment with Field on October 20, 2006, is against the manifest weight of the evidence. We disagree.

¶ 21 The claimant in a workers' compensation case has the burden of proving, by a preponderance of the evidence, all of the elements of his claim, including proof that he suffered an accident which arose out of and in the course of his employment *O'dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). Whether a claimant suffered an accident while working is a question of fact to be resolved by the Commission, and its resolution of the question will not be

disturbed on review unless it is against the manifest weight of the evidence. *Atlantic & Pacific Tea Co. v. Industrial Comm'n*, 67 Ill. 2d 137, 142 (1977). In deciding the matter, it is the function of the Commission to judge the credibility of the witnesses, determine the weight to be given their testimony, and resolve conflicting medical evidence. *Id.* For a finding of fact to be against the manifest weight of the evidence, a conclusion opposite to the one reached by the Commission must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992). Whether this court might have reached the same conclusion is not the test of whether the Commission's determination is supported by the manifest weight of the evidence. The proper test is whether the Commission's determination is supported by sufficient evidence in the record. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

¶ 22 The alleged work accident giving rise to this action was unwitnessed. The claimant testified, however, that he reported the accident to his supervisor, and his testimony in this regard was unrebutted. He testified that, following the accident, he was in pain and was limping. However, the claimant's co-worker, Yanez, testified that he was working in the same general area as the claimant and observed nothing unusual about the way that the claimant was walking during his work shift or at the end. Additionally, as the Commission noted in its opinion, the claimant's medical records from October 21, 2006, when he saw Dr. Cisneros in Mexico, through his hospitalization at MacNeal Hospital and the amputation of his leg are void of any mention of an accident at work on October 20, 2006. It was not until December 20, 2006, six days after the claimant filed the instant workers' compensation claim, that any mention of a work accident appears in his medical records.

¶ 23 There is no question that the claimant suffered from diabetes, neuropathy and sciatica prior to the accident. Nevertheless, Dr. Garapati rendered a causation opinion favorable to the claimant of which the Commission was critical. However, as Field points out, that criticism is of little relevance to the issue of whether the claimant actually suffered an accidental injury while working. What is important about Dr. Garapati's opinion is that it was given under the assumption that the claimant suffered an injury while working.

¶ 24 A number of facts in evidence support the Commission's conclusion that the claimant failed to prove that he suffered accidental injuries on October 20, 2006, which arose out of and in the course of his employment with Field. The claimant sought no medical care on the day of his alleged injury. Yanez contradicted the claimant's testimony that he was limping by the end of his work shift on October 20, 2006. And, there is a total absence of any reference to a work accident in the claimant's medical records until six days after this claim was filed, some two months after the alleged accident. No doubt, there is also evidence in the record supporting the claimant's assertion that he injured his left foot while working on October 20, 2006; namely, his own testimony and the fact that he stated that he reported an accident to his supervisor on that same day. In the last analysis, however, the issue is one of fact to be resolved by the Commission; and, although we may not have not reached the same conclusion, we cannot say that, based upon the record before us, the Commission's decision is against the manifest weight of the evidence.

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

¶ 26 Affirmed.