

2015 IL App (1st) 133435WC-U  
No. 1-13-3435WC  
Order filed: August 21, 2015

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

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MEGHAN McGEE,	)	Appeal from the Circuit Court
	)	of Cook County
Plaintiff-Appellant,	)	
	)	
v.	)	No. 13-L-50345
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION and SCHAUMBURG PARK	)	
DISTRICT and EMPLOYERS' CLAIM	)	
SERVICES, INC.,	)	Honorable
	)	Patrick J. Sherlock,
Defendants-Appellees.	)	Judge, Presiding.

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JUSTICE HUDSON delivered the judgment of the court.  
Presiding Justice Holdridge and Justices Hoffman, Harris, and Stewart concurred in the judgment.

**ORDER**

¶ 1 *Held:* Claimant failed to show that Commission's decision regarding causation was against the manifest weight of the evidence where decision involved resolving conflicts in testimony between two experts.

¶ 2 I. INTRODUCTION

¶ 3 Claimant, Meghan McGee, appeals an order of the circuit court of Cook County that confirmed a decision of the Illinois Workers' Compensation Commission (Commission) denying her claim against respondent, Schaumburg Park District, for benefits under the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2002)). For the reasons that follow, we affirm.

¶ 4 II. BACKGROUND

¶ 5 The following is taken from the evidence produced in the hearing below. Claimant was employed by respondent as an "assistant coordinator." She worked for the "KASPER" program, which is essentially a daycare service for kindergarten students for the half of the day that they are not in school. Her duties included taking attendance, cleaning, preparing snacks, and ensuring the children got back on the appropriate bus.

¶ 6 Children would arrive by bus and enter respondent's facility (the Bock Center). Claimant remained inside a hallway from where she could observe the children. She would take attendance as they entered the building. She performed this task on a daily basis and had been doing so for the nine months preceding her alleged injury. Claimant would look up to observe the children and then down so that she could check them off a list. Typically, claimant remained seated on a bench that was affixed directly to a wall so that a person's back would be against the wall if he or she were using the bench. Claimant had observed children hit their heads on the wall (which was made of brick) in the past. The children would be given cold compresses.

¶ 7 On September 8, 2010, claimant was performing this task. She "sat up" to see if a bus had arrived and struck her head against the brick wall. She "got dizzy" and "saw stars," which she reported to another employee who was present. She continued to take attendance for another 15 to 20 minutes. After all the children had arrived, she went to help prepare lunch. She told the

site coordinator (Margie, her immediate supervisor) that she had hit her head. Margie checked her eyes and head and gave claimant a frozen sponge.

¶ 8 After completing her shift and picking up her daughter from school, claimant went to the emergency room at Northwest Community Hospital, as instructed by respondent. Claimant had a “bad headache” and her “neck was just killing” her. She was also nauseous. X rays were taken, and Zofran was prescribed. Claimant was instructed to return in two days. When she did, a CT scan of her neck and brain was performed and additional medications were prescribed. She returned three days later as she felt she was not getting any better. On September 15, 2010, claimant saw Dr. Mark Francis at Alexian Brothers Medical Group. She was told that she had suffered a concussion. Claimant’s hands were numb, she was vomiting, she was seeing spots, and she could not turn her head. Claimant was referred to Dr. Bertoglio, a neurologist.

¶ 9 Bertoglio took claimant off work and ordered an MRI. The MRI was performed on September 24, 2010. Bertoglio diagnosed a Type I Chiari malformation. This condition involves the cerebellar tonsils descending through an opening at the base of the skull. This impairs the flow of spinal fluid and leads to a number of symptoms, including occipital (posterior) headaches. Bertoglio informed claimant that surgery was an option. Bertoglio subsequently testified that it was possible for a mild trauma to the head to exacerbate a Chiari malformation. He further opined that claimant’s condition was causally related to her accident, based in part upon the concordance between the onset of the symptoms and the accident.

¶ 10 Dr. Zelby examined claimant on respondent’s behalf on October 27, 2010. He opined that none of claimant’s symptoms were related to her Chiari malformation. He characterized her malformation as “very modest.” Her tonsils had “barely descend[ed] the foramen magnum,” so there was “no compression on the medulla.” Her neurological examination revealed no

abnormalities. Spine X rays were normal. Moreover, there was no “abnormal enhancement” of the tonsils, which remained rounded. Typically, in a symptomatic Chiari malformation, Zelby explained, the tonsils become pointed.

¶ 11 Zelby further noted that claimant had a history of migraine headaches. He stated that claimant’s post-accident headaches were similar in nature to her earlier headaches. As such, Zelby believed that claimant was simply experiencing migraine headaches, “since the modest nature of the Chiari indicates that that would not be the culprit.” He opined that the incident at work would “not have resulted in a Chiari to become symptomatic[,] particularly with her modest Chiari.” He stated “it was possible that an exacerbation of her migraines occurred as a consequence of her minor head injury.” He added that any mild concussion or exacerbation of her headaches would have resolved within 8 to 12 weeks. Zelby did not believe claimant was a candidate for surgery.

¶ 12 Zelby was aware of studies that indicated that a mild head trauma could cause a Chiari malformation to become symptomatic. He did not disagree with them, at least under appropriate circumstances. However, he opined that it would take a more significant trauma than that experienced by claimant. This, he stated, was largely due to the fact that claimant’s Chiari malformation was of a “modest nature.”

¶ 13 The Commission found that claimant did not carry her burden of proof as to accident or causation. Regarding accident, the Commission found that claimant had not established that the bench she sat on when she hit her head was defective in any way. It also found that she failed to prove that using the bench subjected her to a hazard to a greater degree than any faced by the general public. Regarding causation, the Commission found that Bertoglio and Zelby had examined claimant to a similar degree and, in this respect, there was no reason to attribute more

weight to Bertoglio's testimony as the arbitrator had. It noted the Zelby was "better credentialed" than Bertoglio. Further, while Bertoglio opined that a causal link existed between claimant's accident and condition of ill-being, he declined to offer any opinion when a hypothetical based on claimant's situation was presented to him. He simply believed that any minor head trauma could aggravate a Chiari malformation. The Commission characterized Bertoglio's testimony as "more of an academic opinion based on a few medical papers as opposed to practical hands on experience." Zelby, according to the Commission, "appears to have more practical experience with the condition." Zelby opined that claimant's symptoms were due to an aggravation of her "pre-existing migraine condition." He also found claimant's condition to be temporary in nature. It would resolve in 8 to 12 weeks. The Commission expressly stated that it was placing more weight on Zelby's opinions and found that claimant "sustained a temporary aggravation of her pre-existing condition or at most a post-concussive, closed-head injury that should have resolved itself in eight to twelve weeks." Accordingly, it found that claimant had proven neither accident nor that her present condition of ill-being was caused by her purported accident. The circuit court confirmed the Commission's decision, and this appeal followed.

¶ 14

### III. ANALYSIS

¶ 15 Claimant now appeals, arguing that the Commission's decisions regarding accident and causation are erroneous. Both are necessary elements of a workers' compensation claim. See *Absolute Cleaning/ SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 470 (2011). Hence, claimant would have to successfully attack both decisions in order to prevail in this appeal. As we conclude that claimant has not established that the Commission's finding

regarding causation is erroneous, we need not address the issue of accident in detail, as it is an alternate basis for denying compensation.

¶ 16 Causation presents a question of fact. *Certi-Serve, Inc. v. Industrial Comm’n*, 101 Ill. 2d 236, 244 (1984). Therefore, we will only reverse a decision of the Commission concerning this issue if it is against the manifest weight of the evidence. *Id.* Assessing the credibility of witnesses, resolving conflicts in the evidence, and weighing evidence are all primarily matters for the Commission. *Sisbro, Inc. v. Industrial Comm’n*, 207 Ill. 2d 193, 207 (2003). A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Caterpillar, Inc. v. Industrial Comm’n*, 228, Ill. App. 3d 288, 291 (1992). Regarding medical issues, we owe an especially high degree of deference to the Commission, due to its well-recognized expertise in the the field. *Long v Industrial Comm’n*, 76 Ill. 2d 561, 566 (1979).

¶ 17 In this case, the issue of causation came down to resolving the conflict in the testimony of two experts, Bertoglio and Zelby. Bertoglio testified (via deposition) that he is a specialist in neurosurgery. He is board eligible, but had not yet sat for his boards at the time of his deposition. He stated that people can have an asymptomatic Chiari malformation and that trauma to the head or neck can cause a Chiari malformation to become symptomatic. Even a minor head injury can cause the onset of symptoms.

¶ 18 Bertoglio testified that he began treating claimant on September 16, 2010. His initial examination revealed no neurological abnormalities. He then ordered an MRI, which revealed the Chiari malformation. This finding was consistent with claimant’s subjective complaints of a headache, primarily in the back of her head, that was “disabling in severity and worse with extension of her neck.” She also complained of stiffness in her neck and “a feeling of increased pressure,” which was also consistent with a Chiari malformation. Bertoglio opined that

claimant's at-work injury "caused or exacerbated her symptoms from the preexisting" Chiari malformation. He suggested a surgery that involved removing some bone in the area of the malformation to reduce pressure upon in the area and allow more room for spinal fluid to flow.

¶ 19 During the deposition, claimant's counsel presented Bertoglio with the following hypothetical:

"Let's assume that [claimant] in the course of taking care of the children at this school was seated in the blue bench \*\*\* and that she was seated there while she was waiting for the children to gather and that in so sitting she looked up at one point in time and moved her head back and it hit against the concrete wall that is shown in the photograph.

Do you have an opinion within a reasonable degree of medical and surgical certainly as to whether that type of head trauma could exacerbate the Chiari malformation that she has?"

Bertoglio responded, "Well, I don't really have an opinion about that." He continued, "I think that any minor head injury could exacerbate her symptoms and I don't assess from a description like that the degree to which she hit her head or was injured."

¶ 20 Zelby, who is board certified in neurological surgery, also testified via deposition. He examined claimant on October 27, 2010. Claimant related that she was injured when she "sat up and struck her head on the wall behind her." She did not lose consciousness, but she did see stars. She experienced headaches and neck stiffness, and her condition was deteriorating. By the time Zelby examined her, claimant was experiencing nausea, light sensitivity, and numbness in her left hand. Zelby stated that claimant's Chiari malformation was "very modest." Neurologically, claimant was "completely normal."

¶ 21 Zelby noted that claimant had a history of migraine headaches. Her current “symptoms were similar to her previous migraines although longer lasting.” He opined that claimant’s headaches and the Chiari malformation were “not caused by her work injury.” He added, “I said it was possible that an exacerbation of her migraines occurred as a consequence of her minor head injury, but treatment of the [Chiari malformation] was not necessary as a consequence of her current symptoms or as a consequence of her work injury.” Furthermore, “any mild concussion or exacerbation of migraine headaches that resulted from her injury would have easily resolved within 8 or 12 weeks.” He did not believe surgery was appropriate.

¶ 22 Zelby agreed that a minor trauma could cause a Chiari malformation to become symptomatic. However, he qualified this statement by explaining that it would require “the right trauma and the right type of Chiari [malformation].” It would require “more than basically sitting up and hitting your head on the back [*sic*] of a brick wall.” More significant in claimant’s case was “the modest nature of the Chiari [malformation].”

¶ 23 On cross-examination, Zelby was asked whether he agreed that the at-work accident exacerbated claimant’s migraine headaches. He replied, “Yes[,] I think that’s possible.” He also acknowledged that medical literature discusses “the affect of minor head trauma on patients with Chiari malformation.”

¶ 24 Thus, the issue of causation in this case came down to resolving the conflicts in the opinions of these two doctors. Before the Commission, claimant bore the burden of proving causation by a preponderance of the evidence. *Paganelis v. Industrial Comm’n*, 132 Ill. 2d 468, 480 (1989). The Commission determined that Zelby’s opinion was entitled to more weight than that of Bertoglio. It cited a number of factors underlying its decision. It found that Bertoglio had not spent significantly more time treating claimant than Zelby had in examining her. It noted

that Zelby was “better credentialed” than Bertoglio. Moreover, Bertoglio declined to offer an opinion when presented with a hypothetical that mirrored claimant’s accident and only opined generally that any minor trauma could exacerbate a Chiari malformation. On the other hand, Zelby testified that claimant’s Chiari malformation was mild and the type of trauma she experienced would not have caused it to become symptomatic. All of these findings are supported by the record, particularly, those portions of the depositions of the two doctors that are set forth above. Given the state of the record, we cannot say that an opposite conclusion to the Commission’s is clearly apparent, or, in turn, that its decision on causation is against the manifest weight of the evidence. *Caterpillar, Inc.*, 228, Ill. App. 3d at 291.

¶ 25 In arguing that a different result should obtain, claimant first recounts claimant’s medical history and notes that there is no disagreement between the doctors that claimant has a Chiari malformation. She then criticizes Zelby’s opinion as being based on a single examination. She also asserts that Bertoglio treated claimant over a longer period than Zelby. However, the Commission expressly addressed this issue and persuasively pointed out that Bertoglio did not, in fact, treat claimant for a significantly longer period than Zelby was involved with her.

¶ 26 Claimant then observes that Zelby acknowledged that claimant’s work-related accident could have exacerbated her pre-existing migraines and that this would have lasted for 8 to 12 weeks. She then asserts that at least for this 8-to-12-week period, the manifest weight of the evidence indicates a causal connection existed. However, the Commission noted that “[t]he question before [it was] whether the alleged work accident resulted in [claimant’s] pre-existing congenital [Chiari malformation] to become symptomatic and in need of invasive surgery.” On this question, assuming, *arguendo*, that the manifest weight of the evidence favors claimant as it pertains to migraines, this provides no support for claimant’s contention that she needs surgery

for her Chiari malformation. Indeed, Zelby testified that this condition would have resolved on its own.

¶ 27 Moreover, we note that Zelby merely acknowledged that it was possible that claimant's at-work accident aggravated her migraine headaches. If claimant were proceeding on the theory that her symptoms were due to such an aggravation, we cannot say that Zelby's acknowledgement was so persuasive that the Commission had to accept this alternate theory of causation. That this was a *possible* cause simply does not establish that an aggravation of this pre-existing condition was *the* cause of claimant's condition of ill-being *to a reasonable degree of medical certainty*. Cf. *Tolbert v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130523WC, ¶ 61 ("Dr. Bruyntjens' opinion that histoplasmosis is recognized as an 'almost' benign infection is not the equivalent of an opinion, to a reasonable degree of medical certainty, that the claimant's infection is benign or even 'almost' benign. In addition, the doctor's 'concern' about the claimant's smoking is not the equivalent to an opinion that, to a reasonable degree of medical certainty, the claimant's current conditions of ill-being are unrelated to the workplace exposure to the fungus causing histoplasmosis; Dr. Farah also noted a concern about the claimant's smoking."). In short, Zelby's acknowledgement is insufficient for us to determine that the Commission's decision is contrary to the manifest weight of the evidence.

¶ 28 We further observe that claimant does not fully develop this argument. Notably, claimant makes no attempt to identify which portions of the award she seeks would be attributable to the period during which the aggravation of her migraines possibly occurred, what treatment was related to migraines, and whether such treatment was reasonable and necessary in the context of an aggravation of migraines rather than a Chiari malformation. As such, even if we were to accept claimant's argument, we could not fashion an order granting appropriate relief.

¶ 29

#### IV. CONCLUSION

¶ 30 In light of the foregoing, the judgment of the circuit court of Cook County confirming the decision of the Commission is affirmed.

¶ 31 Affirm.