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2015 IL App (1st) 141536WC-U

Order filed: October 16, 2015

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

DAVID PARA,)	Appeal from the Circuit Court
)	of Cook County, Illinois.
Plaintiff-Appellant,)	
)	
v.)	Appeal No. 1-14-1536WC
)	Circuit No. 13-L-50845
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, <i>et al.</i> , (Jack's Specialized)	Honorable
Services, Defendant-Appellee).)	Carl Anthony Walker,
)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Hudson, Harris, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held:* The Commission's determination that the claimant was not entitled to medical expenses after March 31, 2007, is not against the manifest weight of the evidence.

¶ 2 The claimant, David Para, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2002)), seeking benefits for injuries he sustained while working as a truck driver for Jack's Specialized Services (employer) on April 26, 2006. These injuries occurred when prefabricated building materials fell off a flatbed truck the claimant was unloading. The employer paid temporary total disability (TTD) benefits and

medical expenses related to that accident. The claimant returned to work on October 12, 2006, and reported an accident occurring on that date which led to the filing a second application for adjustment of claim seeking benefits for injuries sustained while throwing chains to secure a load on a truck. The employer provided medical expenses for that claim until April 2007 when the claimant obtained employment from another company.

¶ 3 The two claims were consolidated and a section 19(b) hearing was held on January 13, 2010, before Arbitrator Kathleen A. Hagan at which the claimant sought payment of necessary and reasonable medical expenses incurred after April 1, 2007, as well as prospective medical expenses relating to both accidents. The arbitrator found that an industrial accident had occurred on April 26, 2006, and awarded TTD benefits from April 27, 2006, until October 11, 2006. The arbitrator also found that a second industrial accident occurred on October 12, 2006, and awarded TTD benefits from October 13, 2006, until March 31, 2007. The arbitrator denied the claimant's claim for further medical expenses on or after April 1, 2007, finding that he had failed to establish a causal connection between the accidents and his condition or need for prospective medical treatment after that date. The claimant sought review before the Illinois Workers' Compensation Commission (Commission), which unanimously affirmed and adopted the arbitrator's decision.

¶ 4 The claimant then sought judicial review of the Commission's decision in the circuit court of Cook County. Judge Robert Lopez Cepero, found the Commission's decision to be against the manifest weight of the evidence, reversed the order of the Commission, and remanded the matter to Commission. The employer sought review of the circuit court's order before this court. On February 1, 2013, this court, finding the circuit court's order to be unclear, issued a mandate remanding the matter to the circuit court for clarification. On May 29, 2013, no further action having been taken by the circuit court, this court issued a second mandate vacating the circuit

court's order and directing that the matter be assigned to a different judge. The matter was then assigned to Judge Carl D. Walker, who entered an order on April 23, 2014, confirming the decision of the Commission. The claimant then filed a timely appeal with this court.

¶ 5 On appeal, the claimant maintains that the Commission erred in finding that he was not entitled to payment of medical expenses after March 31, 2007.

¶ 6 **FACTS**

¶ 7 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on January 13, 2010.

¶ 8 The claimant had been employed as a truck driver by the employer since December 2005. His duties included driving a flatbed truck and securing loads on the flatbed using chains, straps, and tarps. The claimant did not do any of the actual loading or unloading. The claimant had three prior workers' compensation settlements, two with a prior employer. On February 23, 2007, a settlement for \$152,720.96 was approved related to a prior back injury claim.

¶ 9 The claimant testified that on April 26, 2006, he was removing straps from a load on his flatbed trailer when a prefabricated steel balcony fell off the trailer and landed on his right side, pinning him to the ground. There were no other witnesses to the accident. The Oak Forest Fire Department responded and transported the claimant to St. James Hospital in nearby Olympia Fields, Illinois. The EMS report noted chest trauma and a laceration on the back of the head. At the hospital, several diagnostic tests were performed and the claimant was diagnosed with an L3 compression fracture, left chest trauma, and possible non-displaced fractures of the anterior right fourth and fifth ribs. The claimant reported no cervical complaints and the diagnostic tests revealed no cervical spine injury. The claimant was held for observation and discharged the following day, April 27, 2006.

¶ 10 While the claimant was at St. James, he was examined by Dr. Richard Freeman, an orthopedic neurologist. On May 15, 2006, the claimant was again examined by Dr. Freeman who confirmed a diagnosis of L3 compression fracture and ordered the claimant off work. On June 5, 2006, the claimant returned to Dr. Freeman reporting pain in his low back, cervical spine discomfort, shoulder, right elbow, and ribs. He also reported trouble breathing. Dr. Freeman ordered x-rays which revealed degeneration of the cervical spine and chronic compression fractures at C5 and C6. Dr. Freeman ordered an MRI of the cervical spine, which was performed on June 23, 2006. According to Dr. Freeman's written report, the MRI revealed compression deformity at C5-C6 and chronic degenerative conditions at C5-C6 and C6-C7. Dr. Freeman again examined the claimant on July 3, 2006, after which he opined that the claimant did not require surgical intervention. Dr. Freeman released the claimant to sedentary work with no overhead motions. On August 14, 2006, Dr. Freeman again examined the claimant and restated his opinion that the claimant did not require any surgical intervention. He prescribed a regime of physical therapy and authorized the claimant to remain off work until completion of the physical therapy.

¶ 11 On August 22, 2006, the claimant was examined at the request of the employer by Dr. Jeffrey Coe, a board certified specialist in occupational medicine. Dr. Coe noted that the claimant reported no significant injuries to his back or chest prior to the April 26, 2006, accident. After an examining the claimant and reviewing all medical records, Dr. Coe confirmed the diagnosis of compression fracture at L3 and possible compression fractures at C5 and C6. Dr. Coe opined that the claimant's recovery would be unremarkable and that all fractures should heal in approximately three months. He further opined that at that time the claimant should be able to return to some form of gainful employment.

¶ 12 On September 14, 2006, the claimant was again examined by Dr. Freeman, who prescribed aqua-therapy for the cervical/lumbar fractures. On October 9, 2006, Dr. Freeman released the claimant to return to work with a 40-pound lifting restriction, only occasional bending or twisting and changing of positions as needed.

¶ 13 The claimant testified that he returned to work on October 12, 2006, and suffered an accident that same day. The claimant testified that he when he attempted to chain a load on the trailer, he felt a pinch in his low back and was unable to throw the chain over the load. He estimated that the chain weighed between 30 and 40 pounds, although he acknowledged that the chain may have weighed in excess of 40 pounds. He testified that a co-worker arrived at his location and chained the load for him. He further testified that on the return trip his low back pain worsened. After returning from this trip, the claimant was informed by the employer that no work was available within his restrictions.

¶ 14 On October 16, 2006, the claimant returned to Dr. Freeman reporting the October 12, 2006, accident. Dr. Freeman diagnosed chronic neck and low back pain aggravated by the accident. His report also indicated that the claimant reported new symptoms of bilateral radiating leg pain. Dr. Freeman took the claimant off work and ordered a new regime of physical therapy. After a follow-up examination on December 4, 2006, Dr. Freeman recommended an EMG test of the lower legs. On February 5, 2007, Dr. Freeman ordered a Functional Capacity Examination (FCE).

¶ 15 On February 6, 2007, the claimant was again examined at the request of the employer by Dr. Coe, who noted the claimant's description of the October 12, 2006, accident. Dr. Coe opined that the claimant suffered a temporary aggravation of condition brought on by the first accident along with some degree of temporary soft tissue pain. He further opined that the claimant would benefit from continuation of the physical therapy prescribed by Dr. Freeman, suggesting that an

additional six weeks would be sufficient. Dr. Coe released the claimant to light duty with a 40-pound restriction and no repetitive bending or twisting at the waist. Dr. Coe noted that the claimant had a long-standing history of low back difficulties which included two prior fusion procedures.

¶ 16 On March 12, 2007, Dr. Freeman continued the claimant's off-work restriction, prescribing continued physical therapy and pain medication.

¶ 17 On April 1, 2007, the claimant began employment with Morehouse Cartage as a dump-truck driver. He testified that in his new job he drove a truck that had a tarp crank, which required him to operate a crank with a circular motion of the upper body, a task which he performed approximately 8 times per day. He reported routinely working 10-hour days consistently up to the date of the hearing.

¶ 18 On June 4, 2007, the claimant was again examined by Dr. Freeman, who noted the claimant now complained of neck spasms, dizziness, headaches and tinnitus. Dr. Freeman ordered continued physical therapy and medication and recommended a new FCE to determine work restrictions. Dr. Freeman also indicated that he was leaving the practice and would turn the claimant's case over to Dr. Patrick Sweeney.

¶ 19 On July 5, 2007, the claimant was first examined by Dr. Sweeney, a board certified orthopedic surgeon. Dr. Sweeney observed a healed compression fracture at L3 with degenerative arthritis, an intact L4 fusion, cervical kyphosis with some compression at C5 and severe degeneration at C5-C6 and C6-C7. Dr. Sweeney noted that the claimant "has been working driving a truck daily." He prescribed continuation of pain medication and an additional round of physical therapy. On October 4, 2007, the claimant reported headaches of increasing severity and duration, so Dr. Sweeney ordered a brain MRI, but the record indicated the MRI

was never performed. The claimant reported he was having difficulty tolerating medication and reported that his headaches were routinely at a level 7 out of 10.

¶ 20 On December 19, 2007, the claimant was examined at the request of the employer by Dr. David Shenker, a board certified neurologist, who issued a 24-page report detailing the claimant's neck, back and right ankle treatments dating back to 1994. He noted that the claimant had low back surgery in 1998, and complained of episodic low back pain thereafter. Dr. Shenker also noted that the claimant had worn a lumbro-sacral back support since 1995. He further noted that an MRI completed in 2001, following a previous work-related accident, revealed degenerative disc disease at L4-L5 and L5-S1, as well as degenerative conditions at C3-C4 through C6-C7. Dr. Shenker further documented treatment received by the claimant relevant to his low and cervical back by a Dr. Malek as well as surgical interventions performed by Dr. Salehi. The report indicated that the claimant had been placed on a permanent 40-pound weight restriction by Dr. Malek in 2001.

¶ 21 Dr. Shenker opined that as a result of the April 26, 2006, accident, the claimant sustained an avulsion and laceration of the scalp, multiple rib fractures, compression fractures of L3, C5 and C6 vertebrae, a chest wall contusion, a right elbow contusion, transitory hypoxia and cerebral concussion. He further opined that if the claimant's history of the October 12, 2006, accident was accurate, he suffered a low back strain and soft-tissue contusions while throwing a chain. Dr. Shenker further opined that neither the May 8, 2006, visit to St. James Hospital, nor the physical therapy beginning on August 2006, were causally related to the April 26, 2006, accident. He also opined that the claimant was able to return to work October 9, 2006, in accordance with Dr. Freeman's restrictions, which Dr. Shenker observed were the same restrictions the claimant was working under prior to the April 26, 2006, accident. Dr. Shenker further opined that the claimant was in need of no further diagnostic testing and that the claimant

was feigning symptoms. Dr. Shenker found no causal connection between his ongoing complaints and either the April 26, 2006, accident or the October 12, 2006, accident.

¶ 22 On July 31, 2008, the claimant was examined by Dr. Jalaja Piska, to whom the claimant had been referred by Dr. Sweeney. Dr. Piska is board certified in interventional pain management. She recommended a course of cervical epidural injections.

¶ 23 On January 20, 2009, the claimant was initially examined by Dr. Sean Salehi, a board certified spinal surgeon. Dr. Salehi diagnosed cervical and lumbar degenerative disc disease. He opined that the majority of the claimant's pain was in the cervical region and was most likely due to significant disc degeneration and kyphotic deformity at C5-C7. In a letter to the claimant's attorney dated January 29, 2009, Dr. Salehi indicated that the April 26, 2006, accident resulted in an aggravation of the claimant's cervical condition and most likely caused the L3 compression fracture. In a follow-up letter dated April 22, 2009, Dr. Salehi recommended continued pain injections, and imposed a 20-pound lifting restriction.

¶ 24 The claimant testified on direct examination that he did not have a lifting restriction prior to the April 26, 2006 accident. On cross-examination, he admitted that it was possible that Dr. Malek had imposed a permanent lifting restriction and restricted him from truck driving prior to the April 26, 2006, accident. The claimant was shown a copy of his application for employment which he submitted to the employer on November 28, 2005, which omitted any mention of prior workers' compensation claims.

¶ 25 The claimant testified that he passed a Department of Transportation physical prior to being hired by the employer. However, in the health history portion of the physical the claimant check "No" in response to the question "[i]s there any reason you might be unable to perform the functions of the job for which you have applied." He responded in the negative to a question of whether he had any prior surgery. In fact, as the arbitrator noted, he had recently undergone a

low back fusion. The claimant also denied having any “chronic low back pain” or “any spinal injury or disease.” He also made no report that he was under a permanent 40-pound lifting restriction.

¶ 26 On August 21, 2009, Dr. Sweeney gave an evidence deposition in which he testified that he was aware that the claimant had a long history of cervical symptoms prior to April 26, 2006, however he was not aware of the specifics of the prior symptoms nor was he aware that Dr. Malek had diagnosed disc herniation in 2001. Although Dr. Sweeney gave an opinion that the claimant was in need of pain management, and that his current condition of ill-being was the result of an aggravation of his preexisting condition resulting from the April 26, 2006, accident, he could not say that the claimant’s need for ongoing treatment was causally related to the accident or merely the result of the degenerative nature of his condition. He also found it significant that the claimant’s cervical complaints did not appear until over a month after the April 26, 2006, accident. He testified that if construction material falling on the claimant had aggravated the claimant’s underlying cervical condition, the cervical pain should have happened with at least a few days after the accident. That fact that the claimant did not report such pain until nearly a month after the accident suggested to Dr. Sweeney that the accident may not have been a causative factor.

¶ 27 Dr. Salehi also testified by evidence deposition. He opined that the claimant’s current need for treatment was possibly attributable to the degenerative nature of his condition, and that he might have been in the need of the same treatment even if no accidents had occurred.

¶ 28 The record also contained a follow-up report issued by Dr. Shenker on March 2, 2009, in which he opined that there was no causal connection between the claimant’s current complaints and either of the accidents and that the claimant was able to return to regular duty.

¶ 29 The arbitrator determined that, while the claimant established that industrial accidents occurred on April 26, 2006, and October 12, 2006, the claimant's condition of ill-being directly attributable to those accidents (low back strain, and L3 compression fracture) had resolved and his current condition of ill-being predated the April 26, 2006, accident. The arbitrator noted that medical records established that the claimant had a longstanding history of preexisting neck and back conditions as well as extensive prior medical treatments for those conditions. The arbitrator found significance in the fact that the claimant was under a permanent work restriction prior to the April 26, 2006, accident, and he was released to work under the very same restrictions after the October 12, 2006, accident. The arbitrator also found that the claimant was not a credible witness, noting several instances where the claimant's testimony was rebutted by the documentary evidence. This lack of credibility was relevant, according to the arbitrator, since the treating physicians had relied extensively on the claimant's subjective reports of his symptoms.

¶ 30 The arbitrator determined that, on March 31, 2007, the claimant was in the same condition as he had been prior to the accident on April 26, 2006. He determined therefore that any further need for medical treatment after March 31, 2007, was the result of his degenerative condition and not causally related to the accidents at issue. The Commission adopted the arbitrator's findings and the circuit court confirmed the Commission's findings.

¶ 31 ANALYSIS

¶ 32 On appeal, the claimant argues that the Commission erred in finding no causal connection between the claimant's current need for medical treatment and the two accidents. 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 (1980). 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. Moreover, it is the province of the Commission alone to judge the credibility of witnesses, and, while the claimant's testimony alone is sufficient to establish the fact that an accident occurred, the Commission can find the claimant not credible and disregard that testimony. *Parro v. Industrial Comm'n*, 167 Ill. 2d 385, 396 (1996). 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). 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 (1982).

¶ 33 The claimant maintains that the Commission erred in finding that his need for medical treatment after March 31, 2007, was not causally related to the two accidents. He suggests that the weight of the medical evidence suggests otherwise. He points out that his symptoms never abated after the April 2006 accident and that he testified consistently that he worked through the pain. He also suggests that it is "illogical" to attribute his current condition of ill-being to simple degenerative disease. He suggests that the Commission improperly focused its attention on the "tenuous" link between his prior back injuries and his condition after March 31, 2007. Lastly, he maintains that the Commission placed too much emphasis on alleged credibility issues.

¶ 34 We find ample evidence in the record to support the Commission's determination that by, March 31, 2007, the claimant's physical condition had returned to its pre-April 2006 level. There was evidence in the record that the claimant had been placed on permanent restrictions prior to April 2006, and that by March 31, 2007, he was able to resume work under those same restrictions. The overwhelming weight of medical opinion evidence also supported the

Commission's determination. The employer's examining physicians, Drs. Coe and Shenker opined that the claimant's condition had returned to pre-April 2006 levels by March 31, 2007. Both were medically certain that the claimant's need for further treatment after March 2007 was not related to either of the accidents at issue. Even the claimant's treating physicians equivocated on the question of the causal relationship between the claimant's current need for medical treatment and the accidents. Dr. Sweeney could not say with any degree of medical certainty whether the claimant's current need for treatment was the result of the accidents or the degenerative nature of his condition. Dr. Sweeney was troubled by the fact that there seemed to be a gap of almost a month between the April accident and the claimant's first report of severe back pain. Likewise, Dr. Salehi opined that the claimant's current need for treatment was possibly attributable to the degenerative nature of his condition, and that he might have been in the need of the same treatment even if no accidents had occurred. Given the medical evidence, it simply cannot be said that the Commission's finding was "illogical" or against the manifest weight of the evidence.

¶ 35 The claimant's argument that the Commission placed too much weight on his credibility is likewise unconvincing. The credibility of witnesses, including the claimant, is within the unique purview of the Commission. *Parro*, 167 Ill. 2d at 396. Here, the Commission adopted the arbitrator's finding that the claimant was generally not credible. In particular, the claimant's testimony that he was not under any work restrictions prior to the April accident and his admission on cross-examination that it was "possible" that he was under restrictions at the time was very damaging to his credibility and obviously tainted the remainder of his testimony. After reviewing the entire record, we cannot say that the Commission's finding that the claimant lacked credibility was against the manifest weight of the evidence.

¶ 36

CONCLUSION

No. 1-14-1536WC

¶ 37 For the foregoing reasons, we affirm the judgment of the circuit court which confirmed the decision of Commission and remand this case to the Commission for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

¶ 38 Affirmed and remanded.