

2015 IL App (2d) 131229WC-U
No. 2-13-1229WC
Order filed February 19, 2015

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

SCHOOL ASSOCIATION FOR SPECIAL)	Appeal from the
EDUCATION,)	Circuit Court of
)	DuPage County.
Appellant,)	
)	
v.)	No. 13 MR 190
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, <i>et al.</i> ,)	
)	Honorable
)	Terence M. Sheen,
(Deborah Herrick, Appellee).)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The Commission's decision is not against the manifest weight of the evidence where there is sufficient medical evidence to support the Commission's determination that a causal connection existed between the claimant's September 21, 2006, accident and her injuries in June and December 2010.

¶ 2 The claimant, Deborah Herrick, filed an application for adjustment of claim against her employer, the School Association for Special Education, seeking workers' compensation benefits. She alleged that on September 21, 2006, she injured her low back when a student she was restraining fell to the ground pulling her down with him. On June 14, 2010, the claimant injured her left knee after an episode of back pain caused her knee to buckle and she fell. On December 19, 2010, the claimant's left knee buckled and she fell injuring her right ankle. The claim proceeded to an arbitration hearing under the Workers' Compensation Act (the Act) (820 ILCS 305/1) (West 2006)). The arbitrator found that the claimant did sustain an accident on September 21, 2006, that arose out of and in the course of her employment and that her low back condition of ill-being was causally related to the accident. He further found that the claimant's knee and ankle injuries were causally related to the September 21, 2006, workplace accident. The employer was ordered to pay reasonable and necessary medical expenses of \$72,381.29. It was ordered to reimburse the claimant \$1,796.32 for out-of-pocket expenses that she incurred with regard to medical and vocational expenses. The employer was ordered to pay the claimant maintenance benefits of \$717.09 per week for 94 4/7 weeks. It was further ordered to pay the claimant temporary total disability benefits (TTD) of \$717.09 per week for 159 3/7 weeks. The employer was ordered to pay the claimant permanent and total disability benefits (PTD) of \$717.09 per week for life commencing August 8, 2011.

¶ 3 The employer appealed to the Illinois Workers' Compensation Commission (Commission). The Commission affirmed and adopted the arbitrator's decision. One Commissioner dissented. The employer filed a timely petition for review in the circuit court of DuPage County which confirmed the Commission's decision. The employer appeals.

¶ 4 **BACKGROUND**

¶ 5 The following factual recitation is taken from the evidence presented at the arbitration hearings conducted on August 8, 2011, November 14, 2011, and December 9, 2011.

¶ 6 The claimant testified that on September 21, 2006, she worked for the employer as a special education teacher in the transition classroom. She described the transition classroom as a room for eighteen to twenty-one year old students who were transitioning from school into a daycare setting because they were not eligible to work in the community. Her job duties included feeding students, lifting students, teaching daily living skills, and assisting students with their jobs around the school.

¶ 7 On the day of the accident, the claimant testified that a one-on-one assistant was helping a student with his job cleaning tables after breakfast. The assistant asked the claimant for help with the student. The student became agitated and fell to the floor, pulling the claimant and the assistant down with him. They fell between a cabinet, the sink, and a table. The claimant stated that she felt immediate pain in the lower right side

of her back radiating down through her buttocks into her leg. She could not stand or walk without assistance.

¶ 8 The claimant went to chiropractor Dr. Robert Wright that same day. He recommended a magnetic resonance imaging (MRI) scan. On September 29, 2006, the claimant had an MRI scan of her lumbar spine. Dr. John Aikenhead wrote in his report that the scan revealed an L4-L5 broad based protrusion and an L2-L3 right subarticular protrusion. Dr. Wright treated the claimant 24 times between September 25, 2006, and November 13, 2006. He referred her to board certified orthopedic surgeon Dr. W.A. Earman.

¶ 9 Dr. Earman testified by evidence deposition. He testified that he first examined the claimant on November 7, 2006. He explained that she came in after injuring her back when a student pulled her to the floor and fell on top of her. In his evaluation, he wrote that the claimant complained of right low back pain, buttock and leg pain, and pressure pain. He diagnosed her with a contusion in the area of the low back. He stated that the injury was causally related to her workplace accident.

¶ 10 Dr. Earman examined the claimant on December 4, and December 18, 2006. He noted that she had not improved. She complained of pain in her right lower extremity. He diagnosed the claimant with persistent radiculitis. He recommended epidural steroid injections at the L4-L5 level.

¶ 11 On December 22, 2006, the claimant saw Dr. Derhi Saxena at the Center for Pain Management. In a letter to Dr. Earman, Dr. Saxena wrote that the claimant reported a history of pain in her low back, her right hip, and her right leg for the prior three months

resulting from a workplace accident. The claimant had pain radiating down her right leg to her foot, numbness and tingling in her right leg, and weakness in the leg. Dr. Saxena diagnosed the claimant with low back pain, degenerative disc disease, and right lumbar radiculitis. She prescribed lumbar epidural steroid injections. Dr. Saxena performed L4-L5 epidural steroid injections on the claimant on January 19, 2007, February 23, 2007, and March 19, 2007.

¶ 12 Dr. Wright treated the claimant on January 8, January 9, January 11, and January 12, 2007. She complained of pain in the lumbar spine and right leg.

¶ 13 Dr. Earman examined the claimant on January 29, 2007, and February 19, 2007. She complained of weakness over the area of the legs with radiation into the posterior thighs. He prescribed physical therapy.

¶ 14 Dr. Earman examined the claimant on March 12 and March 23, 2007. She had undergone three epidural steroid injections without improvement. She complained of “having a lot of strong radicular pain down the right lower extremity.” He reviewed her diagnostic studies and found “a lot of degenerative changes in the posterior facets particularly at 4-5 and 5-1.” He recommended a CT scan which she underwent on March 26, 2007.

¶ 15 On April 2, 2007, Dr. Earman examined the claimant. He felt that she needed a spinal fusion at L4-L5 and decompression and recommended she obtain a second opinion. On April 30, 2007, Dr. Anis Mekhail examined the claimant for a second opinion. Dr. Mekhail noted that the claimant suffered from back pain and right leg pain. The claimant reported that the leg pain was worse than the back pain. Dr. Mekhail noted

that the claimant had a right leg limp when she walked. Dr. Mekhail opined that decompression would help the claimant's leg pain. A discogram was recommended to identify the pain generator and determine which levels needed to be fused.

¶ 16 On May 7, 2007, Dr. Earman examined the claimant following her second opinion with Dr. Mekhail, and he scheduled her for a discography of the L3 to S1 levels. On June 7, 2007, the claimant had a discogram and a CT scan of the lumbar spine. After reviewing the results of the discogram and CT scan, Dr. Earman recommended a decompression with consideration of a fusion.

¶ 17 On September 24, 2007, Dr. Wright examined the claimant. She complained of pain in the lumbar spine and pain that radiated from her lower back to behind her right knee. He diagnosed her with displacement of the lumbar intervertebral disc without myelopathy.

¶ 18 In June 2008, the claimant was examined at the Laser Spine Institute in Florida by Dr. Zoltan Berecki. She gave a history of falling when helping a special education student. She complained of pain in the right side of her low back radiating into her buttocks and her posterior and thigh occasionally down to her anterior knee and calf area. She also reported some leg weakness and that her leg had given out causing her to fall. The claimant reported that the majority of her pain was right sided causing her to compensate with her left side. Dr. Berecki diagnosed the claimant with lumbar arthritis/osteoarthritis without myelopathy, degenerative disc disease, bulging disc, foraminal/spinal stenosis, and radiculitis. In the fall of 2008, the claimant underwent a course of alternative treatment at the Laser Spine Institute.

¶ 19 Dr. Earman examined the claimant in October and November 2008. She complained of continuing mechanical back pain and leg pain.

¶ 20 Dr. Avi Bernstein testified by evidence deposition that he is a board certified orthopedic surgeon with a focus on spinal surgery. He testified that he performed an independent medical examination of the claimant on December 11, 2008. The claimant complained of pain across the low back and in the right proximal buttock or thigh. He noted that she had a normal gait. He stated that the claimant had a laser operation on her back. He stated that he viewed it as a "bogus treatment" and that it was not an alternative for a spinal fusion.

¶ 21 Dr. Bernstein testified that after examining the claimant he diagnosed her with mechanical low back pain or discogenic back. He opined that her treatment options consisted of living with her current condition or considering further workup to determine whether she was a candidate for an anterior interbody fusion. He stated that based on her history, her condition was causally related to her September 2006 work accident and was an aggravation of a pre-existing degenerative condition.

¶ 22 On March 10, 2009, the claimant had a CT lumbar discogram. Dr. Earman examined the claimant on March 23, 2009, for follow up from her discography. In his patient notes he wrote that he believed that "at this point a transforaminal interbody fusion, posterior spinal fusion both 3-4, 4-5, and 5-1 would probably become necessary." He opined that she had exhausted all other conservative options.

¶ 23 On July 13, 2009, Dr. Bernstein reviewed the results of the claimant's lumbar discogram performed on March 10, 2009. He averred that the claimant was a surgical

candidate and recommended a single level spinal fusion at L4-L5. He opined that in the absence of surgery, the claimant was at maximum medical improvement.

¶ 24 Dr. Earman examined the claimant on October 13, 2009. She complained of significant low back pain. Dr. Earman noted that the claimant walked with a slow antalgic gait pattern. He noted that she may benefit from an interbody fusion and that in the absence of surgical intervention, she was at maximum medical improvement.

¶ 25 Dr. Earman testified that he examined the claimant on December 8, 2009. She complained of continued low back pain and the left knee pain. He diagnosed the claimant with discogenic low back pain and synovitis of the left knee. At that time, he did not have an opinion about the cause of the synovitis of the knee.

¶ 26 Dr. Earman testified that he examined the claimant on December 31, 2009. She complained of pain in the left knee. Because there was swelling within the knee joint and he was unable to determine whether there was a ligament or meniscal injury, he recommended that she have an MRI scan of the knee. The claimant was still having back pain which caused her to limp on the left leg. Dr. Earman opined that this perhaps overstressed the knee. He averred that she developed an abnormal gait due to her back problems. On December 31, 2009, he injected the claimant's knee with cortisone to see if it would decrease the inflammation.

¶ 27 The claimant testified that on June 14, 2010, she walked outside using her cane to observe her son spraying a wasp nest on the side of her home. Her left knee buckled, she slid on the grass, and her left knee hit the front concrete stoop. She was brought to the emergency room of the Palos Community Hospital and was diagnosed with a fracture of

the patella. Dr. Earman performed an open reduction and internal fixation with tension-band wiring of the left patella on the claimant. He noted in the history portion of his patient notes that the claimant told him she was having back pain and her knee gave out. He testified that to a reasonable degree of medical certainty, the claimant's fall on June 14, 2010, was causally related to the initial injury that she sustained because it caused an episode of back pain severe enough for her knee to buckle.

¶ 28 Dr. Bernstein testified that he performed another independent medical examination of the claimant on October 7, 2010. She told him that on June 14, 2010, her left knee gave out, that she struck her left kneecap, and that she suffered a patellar fracture. Dr. Bernstein opined that his examination of the claimant showed that her neurological examination in the lower extremities was normal and she was not dealing with spinal stenosis or nerve radiculopathy. He diagnosed the claimant with a stable degenerative condition of the lumbar spine with continued pain and pressure in her low back due to the degenerative disc condition at the L4-L5 level. He averred to a reasonable degree of medical certainty that there was no causal connection between her fall in June 2010 and the original injury on September 21, 2006. He felt that the knee injury was the result of her knee giving out and that whatever caused her knee to buckle was unrelated to her spine. He stated it was an event that occurred independent of any low back pathology. He opined that the claimant did not have adequate pathology in her spine to justify any type of neurologic weakness that would cause imbalance or inappropriate reflex. He further stated that he did not recommend any further treatment for the claimant's low

back. He averred that the treatment for the claimant's left knee had been reasonable and necessary.

¶ 29 Dr. Earman treated the claimant on October 11, 2010, November 1, 2010, and December 6, 2010. Each time she presented with back pain and pain down her right leg. She also complained of stability issues related to the back pain, which caused her to fall onto her left leg from time to time.

¶ 30 The claimant testified that on December 19, 2010, her left knee buckled just as she was about to descend the stairs to her basement. She fell on the top stair, and her right ankle "smashed into the wall." She was walking with a cane in one hand and holding the handrail on the other side. The claimant went to the Palos Community Hospital emergency room where she was diagnosed with a transverse fracture of the right medial malleolus. Dr. Earman performed an open reduction and internal fixation of the right bimalleolar ankle fracture. He testified that a recent open internal fixation procedure increased a person's likelihood of having her knee buckle. Dr. Earman testified that the fall the claimant sustained on December 19, 2010, was causally related to the claimant's knee injury on June 14, 2010.

¶ 31 The claimant testified that while she was being treated for her back injury, she also experienced difficulty with her left kneecap. She stated that her knee buckled causing her to fall. The claimant stated that since her accident she has walked with an altered gait bearing most of her weight on her left side which she felt caused her left side to become weaker. The claimant testified that since June 14, 2010, her knee had buckled approximately twice per week.

¶ 32 The arbitrator found that the claimant suffered an accident on September 21, 2006, that arose out of and in the course of her employment and that her low back condition of ill-being was causally related to the accident. The arbitrator found that the claimant's knee injury sustained on June 14, 2010, and her ankle injury sustained on December 19, 2010, were causally related to the initial workplace injury sustained on September 21, 2006. The arbitrator specifically rejected Dr. Bernstein 's opinion that the claimant's fall on June 14, 2010, was unrelated to her back injury. The arbitrator found that, based on the totality of the evidence, as a matter of material fact and a conclusion of law, both the claimant's left knee fracture and her right ankle fracture were causally related to her initial back injury of September 21, 2006, and that no intervening accident had been proven. The employer was ordered to pay \$72,381.29 in reasonable and necessary medical services. It was further ordered to reimburse the claimant \$1,796.32 for out-of-pocket expenses she incurred with regard to medical and vocational expenses. The employer was ordered to pay the claimant maintenance benefits of \$717.09 per week for 94 4/7 weeks. It was ordered to pay the claimant TTD benefits of \$717.09 per week for 159 3/7 weeks. The employer was ordered to pay the claimant PTD benefits of \$717.09 per week for life, commencing August 9, 2011.

¶ 33 The employer sought review of this decision before the Commission. The Commission affirmed and adopted the decision of the arbitrator. One Commissioner dissented.

¶ 34 The employer sought judicial review of the Commission's decision in the circuit court of DuPage County. The circuit court confirmed the Commission's decision. The employer appealed.

¶ 35 **ANALYSIS**

¶ 36 The employer argues that the Commission's determination that a causal connection existed between the September 21, 2006, accident and the claimant's injuries in June and December 2010, resulting in additional medical expenses was against the manifest weight of the evidence. The employer does not dispute the necessity or reasonableness of the medical bills incurred. Rather, it disputes whether the claimant's treatment was causally related to the September 2006 work accident.

¶ 37 To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that she has suffered a disabling injury which arose out of and in the course of her employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). Generally, every natural consequence that flows from the injury which arose out of and in the course of the claimant's employment likewise arises out of the employment and is compensable under the Act. *Central Rug & Carpet v. Industrial Comm'n*, 361 Ill. App. 3d 684, 690, 838 N.E.2d 39, 44 (2005). Compensation for the claimant's condition of ill-being may be awarded under the Act even though the conditions of her employment do not constitute the sole, or even the principal, cause of injury. *Mansfield v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 120909WC, ¶27, 999 N.E.2d 832. "The relevant question is whether the evidence supports an inference that the accidental injury aggravated the condition or

accelerated the processes that led to the claimant's current condition of ill-being." *Id.* Whether a causal connection exists is a question of fact for the Commission, and a reviewing court will only overturn the Commission's determination if it is against the manifest weight of the evidence. *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592, 834 N.E.2d 583, 592 (2005). A finding of fact is against the manifest weight of the evidence only when an opposite conclusion is clearly apparent. *Swartz v. Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086, 837 N.E.2d 937, 940 (2005). "[A] reviewing court must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn, nor should a court substitute its judgment for that of the Commission unless the Commission's findings are against the manifest weight of the evidence." *Sisbro Inc.*, 207 Ill. 2d at 206, 797 N.E.2d at 673.

¶ 38 The employer does not dispute that the claimant suffered an injury to her back on September 21, 2006. It argues that the injuries to her left knee and right ankle were the result of two separate and intervening accidents that broke the chain of causation from the original September 2006 work accident.

¶ 39 In support of its position, the employer relies on Dr. Bernstein's October 2010 opinion that the claimant's left knee buckling in June 2010 occurred independent of any low back pathology and there was no causal connection between the September 2006 accident and the claimant's fall and subsequent injury in June 2010. It further argues that Dr. Bernstein's examination "predates the December 2010 accident by two months, indicating the December 2010 accident was also a break in the causal connection chain."

The employer contends that the claimant clearly experienced two intervening accidents; therefore, the medical bills for the resulting treatment were not compensable.

¶ 40 It is the Commission's duty to resolve conflicting medical opinion evidence. *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 786, 821 N.E.2d 807, 812 (2005). The test is whether there is sufficient evidence to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. *Id.* at 786, 821 N.E.2d at 812-13. It is the Commission's role to weigh and resolve conflicts in the evidence and to evaluate witnesses. *Compass Group v. Illinois Workers' Compensation Comm'n*, 2014 IL App (2d) 121283WC, ¶ 18. This court grants "substantial deference to the Commission's findings regarding medical issues, as its expertise in this area is well recognized." *Id.*

¶ 41 Evidence was presented that the claimant's back condition caused her to limp and overstress her left side. The claimant testified that immediately after the accident she felt pain in the lower right side of her back radiating into her leg. She complained throughout the course of her treatment of pain in her leg. The claimant testified that while she was being treated for back pain, she also experienced difficulty with her left kneecap. She stated that since her September 2006, accident she walked with an altered gait bearing most of her weight on her left side. She felt that this resulted in weakness in her left side. She testified that her left knee would buckle causing her to fall.

¶ 42 When Dr. Mekhail examined the claimant on April 30, 2007, he noted that the claimant had a right leg limp when she walked. In June 2008, Dr. Berecki wrote in his patient notes that the claimant informed him that her back pain caused some leg weakness

and that her leg had given out causing her to fall. She told Dr. Berecki that the majority of her pain was right sided causing her to compensate with her left side. When Dr. Earman examined the claimant on October 13, 2009, he noted that she walked with a slow antalgic gait pattern.

¶ 43 On December 8, 2009, Dr. Earman examined the claimant for continued back pain and left knee pain. He examined her again on December 31, 2009, and recommended an MRI scan of the left knee to determine whether there was a ligament or meniscal injury. Dr. Earman opined that the claimant developed an abnormal gait due to her back problems and that this may have overstressed her left knee. He testified that to a reasonable degree of medical certainty, the claimant's fall on June 14, 2010, was causally related to her initial injury on September 2006, because her initial injury caused an episode of back pain severe enough to cause her knee to buckle resulting in her fall.

¶ 44 Following the claimant's knee surgery, Dr. Earman treated the claimant on October 11, November 1, and December 6, 2010. Each time she presented with back pain and pain down her right leg. She also complained of stability issues related to the back pain, which caused her to fall onto the left leg.

¶ 45 The claimant testified that on December 19, 2010, her left knee buckled causing her to fall and injure her right ankle. She stated that since June 14, 2010, her knee buckled approximately twice per week. Dr. Earman testified that the claimant's recent open internal fixation procedure increased her likelihood of having her knee buckle. He testified that the fall the claimant sustained was causally related to her knee injury on June 14, 2010.

¶ 46 The Commission rejected Dr. Bernstein's opinion that the claimant's fall on June 14, 2010, was unrelated to her back injury that she sustained on September 21, 2006. It found that the claimant's knee injury sustained on June 14, 2010, and her ankle injury sustained on December 19, 2010, were causally related to her initial workplace injury sustained on September 21, 2006. It was the Commission's province to determine the credibility of the medical evidence and the weight to be given the opinions of the physicians. There was sufficient evidence in the record to support the Commission's determination that the claimant's knee and ankle injuries were causally related to her September 21, 2006, workplace accident. The Commission's decision was not against the manifest weight of the evidence.

¶ 47 **CONCLUSION**

¶ 48 For the foregoing reasons, we affirm the judgment of the circuit court of DuPage County, confirming the decision of the Commission.

¶ 49 Affirmed.