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

VILLAGE OF LYONS,)	Appeal from the Circuit Court
)	of Du Page County
Plaintiff-Appellant,)	
)	
v.)	No. 13-MR-468
)	
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION and ERIC SCHLAMAN,)	Honorable
)	Bonnie M. Wheaton,
Defendants-Appellees.)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The Commission's decision that claimant's condition of ill being is causally related to his at-work automobile accident is not contrary to the manifest weight of the evidence where the issue turned primarily on resolution of conflicts in the testimony between two doctors and the weight to which claimant's testimony was entitled.

¶ 2 I. INTRODUCTION

¶ 3 Respondent, the Village of Lyons, appeals an order of the circuit court of Du Page County confirming an award of benefits to claimant, Eric Schlaman, in accordance with the provisions of the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)). Respondent contends the Commission's decision regarding causation is contrary to the manifest weight of the evidence. We affirm and remand in accordance with *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980).

¶ 4 II. BACKGROUND

¶ 5 Claimant is employed by respondent as a police officer. On the morning of January 13, 2011, claimant was on patrol when he observed a speeding vehicle. He pursued the vehicle and, as he rounded a curve, his squad car slipped on ice and collided with two oncoming vehicles. He was travelling at approximately 50 miles-per-hour at the time. Rescuers used the "jaws of life" to remove claimant from the vehicle. He was taken by ambulance to the Loyola University Emergency Department. According to medical records, claimant complained of knee, mid-back, and neck pain, though he testified he did not recall complaining of neck pain. He was discharged on the same day of the accident with prescriptions for Norco and Flexeril.

¶ 6 Claimant began treating with Dr. Mary Capelli-Schellpfeffer on January 20, 2011. She diagnosed a neck sprain or strain, a head contusion, and a knee contusion. She also referred claimant to Dr. Alexander Ghanayem, an orthopedic spine specialist and ordered physical therapy. During his final visit with Capelli-Schellpfeffer, she recommended he continue to treat with his pain specialist, Dr. Scott Glaser.

¶ 7 On March 9, 2011, claimant was examined by Ghanayem. Ghanayem's records state that claimant presented with "neck pain between his shoulder blades." They note that claimant denied previous neck problems. Ghanayem diagnosed "residual myofascial neck pain" and also

noted that some symptoms might be the result of a disk protrusion. He did not believe surgery was appropriate.

¶ 8 Claimant had been treating with Dr. Glaser since July 12, 2010, before the accident, to address flank pain caused by kidney disease. Glaser examined claimant on February 22, 2011, for the first time following the accident (the arbitrator noted that this appointment was “seemingly” scheduled to address flank pain rather than the accident). Claimant complained of neck pain and dorsal spine pain. Glaser diagnosed the “onset of pain from his cervical facet joints and thoracic facet joints.” Glaser opined that these issues were caused by the accident. He explained that claimant had no history of thoracic spine pain prior to the accident. He believed that claimant might benefit from bilateral facet injections. However, a cervical facet injection on March 23, 2011, provided no relief, while a thoracic facet injection administered on April 25, 2011, provided limited relief. Glaser then recommended a medial-branch nerve block, but that procedure exacerbated claimant’s pain. Glaser then recommended radio frequency (RF) treatment of the medial-branch nerve. This resulted in significant short-term relief and some long-term relief as well; however, the procedure did not control the pain in one area. Accordingly, Glaser performed a suprascapular nerve block. This resulted in complete relief for two days and partial relief for a time thereafter. Claimant’s pain eventually returned at previous levels. Glaser later recommended spinal cord stimulation. He last saw claimant on December 13, 2011. Claimant was still complaining of pain in the “thoracic area over the shoulder blade.” Glaser testified that his treatments were necessitated by claimant’s accident.

¶ 9 On cross-examination, Glaser explained that his treatment of claimant preceding the accident involved claimant’s flank and lumbar area. Prior to the accident, Glaser never treated claimant for a problem with his thoracic spine. Glaser acknowledged that his records from

February 2011 state that claimant's neck pain had increased; however, he explained that this notation was "not well worded" and that claimant had not reported neck pain to Glaser prior to this time. Claimant filled out a diagram indicating that he was experiencing pain "down the midline from the neck pretty much to the bottom of the shoulder blades." This is the area, Glaser explained, that he opined was causally related to the accident. Glaser agreed that there were no imaging studies confirming his diagnosis. He explained that imaging studies have a "very low value" in diagnosing what he believed claimant's condition to be, so he did not use any.

¶ 10 Claimant was examined by Dr. Martin P. Lanoff on respondent's behalf. Lanoff's report begins by stating that he spent 35 minutes with claimant while accompanied by two medical students. He also reviewed the records of the Loyola University Emergency Department, Glaser, and Ghanayem. He does not reference any records from Capelli-Schellpfeffer. Moreover, though claimant provided him with the film of a CT scan of his thoracic spine, Lanoff stated that, "unfortunately[,] it would not open." However, he surmised that "[t]he reading was apparently negative." He criticized Glaser's diagnosis of "facet arthropathy," claiming there is "no reliable physical examination for the supposed diagnosis." In his report, Lanoff offered to produce studies in support of this claim. Lanoff further stated that "the concept of 'diagnostic' facet injections and/or medial branch blocks is one that is scientifically invalid." Lanoff observed that claimant's pain was no longer in his neck; rather, it was in the medial periscapular region. He opined that spinal cord stimulation "is absolutely not indicated in this gentleman for any number of reasons" (upon which he did not elaborate). Lanoff also stated, "There is certainly no tenderness over any of the facet joints." He opined that claimant's complaints "do not follow any particular pattern of abnormality." Further, subjective complaints were "well out of proportion" to objective findings. Finally, he opined that surgery is not appropriate, claimant

would be capable of full-duty employment after ceasing to take narcotic medications, and no preexisting condition was aggravated. None of claimant's issues, Lanoff opined, "have anything to do with a work-related scenario in any way, shape, or form."

¶ 11 Claimant testified that he attempted to return to work in the spring of 2011. He was unsuccessful due to his pain, which was exacerbated by his bullet proof vest and duty belt. He stated that he did not recall complaining of neck pain after the accident; rather, the area in which he experienced pain was between his shoulder blades. Claimant stated that he began taking Vicodin about a year before the accident due to the pain caused by his kidney disease. On cross-examination, he stated he would not disagree with medical records stating he was first prescribed Vicodin in 2006. He explained that this earlier prescription was related to an episode of gout. Since 2009, he has primarily used Vicodin to control his pain.

¶ 12 The arbitrator found that claimant's condition of ill being was causally related to the accident and awarded benefits under the Act. Regarding causation, the arbitrator noted Glaser's testimony that claimant did not have a history of neck or thoracic spine pain and claimant's testimony that he never experienced pain in this right shoulder blade before the accident. He also relied on Glaser's express opinion that claimant's condition was causally related to the accident, crediting Glaser's testimony that "he utilized the highest level of scientific proof available."

¶ 13 The arbitrator rejected the opinion of Lanoff, first noting inaccuracies in Lanoff's characterizations of portions of claimant's medical records. For example, Lanoff stated that claimant had various injections, "none of which helped at all." In fact, the arbitrator noted, claimant's records showed that for the most part such treatments were successful to some degree, with the exception of the pain claimant experienced in his shoulder blade. The arbitrator also

observed that Lanoff apparently did not review any records from Loyola Occupational Health, where Capelli-Schellpfeffer practiced. Further, despite Lanoff's offer to produce studies to document his claim that there is no reliable examination or imaging study to diagnose facet arthropathy, no such studies were identified or produced. The arbitrator found, "These inconsistencies undermine Dr. Lanoff's findings and conclusions."

¶ 14 The arbitrator found Glaser's opinions entitled to more credence than those of Lanoff. He also credited claimant's testimony. The arbitrator acknowledged that claimant stated that he did not complain of neck pain following the accident while his medical records do reference neck pain. The arbitrator found this discrepancy "minor in nature," noting that a diagram claimant filled out in February 2011 shows pain extending from the mid-line of the neck to the bottom of the shoulder blades. This was the same area claimant indicated he was having problems with during his testimony.

¶ 15 As the sole issue raised by respondent is causation, we need not address other aspects of the arbitrator's decision. Two commissioners adopted the decision of the arbitrator in its entirety, remanding pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980). One dissented, believing that there had been no significant change in the condition of claimant's back and neck as a result of the accident. The dissenting commissioner relied on what he believed to be claimant's lack of credibility, asserting that "the [a]rbitrator failed to weigh numerous inconsistencies in [claimant's] testimony." The circuit court of Du Page County confirmed the Commission, and this appeal followed.

¶ 16

III. ANALYSIS

¶ 17 On appeal, respondent challenges the Commission's decision regarding causation. Causation, of course, presents a question of fact. *McKernin Exhibits, Inc. v. Industrial Comm'n*,

361 Ill. App. 3d 666, 671 (2005). Accordingly, we apply the manifest-weight standard of review. *Efremidis v. Industrial Comm'n*, 308 Ill. App. 3d 415, 422 (1999). In accordance with this standard, we will reverse only if an opposite conclusion is clearly apparent. *Id.* Moreover, regarding medical issues, we owe heightened deference to the Commission due the the expertise it has long been recognized to possess in such matters. *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566 (1979).

¶ 18 To be entitled to benefits under the Act, a claimant must prove by a preponderance of the evidence that his or her condition was caused by his or her employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). Proof of a prior state of good health, an accident, and a change in health following the accident allows an inference that the accident is the cause of the change in health. *Navistar International Transportation Corp. v. Industrial Comm'n*, 315 Ill. App. 3d 1197, 1205 (2000). Glaser testified that claimant had no history of thoracic spine pain prior to the accident. Claimant also testified that he did not experience pain in his right shoulder blade before the accident. This allows an inference (which the majority of the Commission chose to draw) that the deterioration in the condition of this region of claimant's body subsequent to the accident was caused by the accident. Moreover, Glaser expressly opined as to a causal connection between claimant's accident and injury.

¶ 19 The evidence to the contrary consists primarily of Lanoff's opinions and his criticism of Glaser's opinion. These were considered and rejected by the Commission. Moreover, the Commission set forth a reasoned basis for its evaluation of Lanoff's opinions. It pointed out that Lanoff mischaracterized some of claimant's medical records and did not review others. It noted that Lanoff's criticisms of Glaser were not substantiated in that they were based on studies that

were never produced or identified. Thus, the Commission explained, in detail, why it found Lanoff's opinions worthy of little weight.

¶ 20 On the state of this record, we cannot say that an opposite conclusion to the Commission's is clearly apparent. Nevertheless, respondent contends that we must reverse the trial court and Commission. It contends that the Commission ignored "numerous inconsistencies in [claimant's] testimony." Resolving conflicts in the record is primarily for the Commission. *Navistar International Transportation Corp. v. Industrial Comm'n*, 331 Ill. App. 3d 405, 415 (2000). Respondent identifies nothing so compelling as to allow us to conclude an opposite conclusion is clearly apparent. It is true that the dissent articulated similar concerns; however, the dissenting commissioner is one of the triers of fact and free to make such evaluations in the first instance. We, on the other hand, as a court of review, simply cannot reassess the evidence and substitute our judgment for the Commission's majority. *Setzkorn v. Industrial Comm'n*, 353 Ill. App. 3d 1049, 1055 (2004). Respondent contends that the various inconsistencies render claimant incredible. Again, assessing credibility is primarily for the Commission. *Teska v. Industrial Comm'n*, 266 Ill. App. 3d 740, 741 (1994). Respondent points to nothing so compelling as to render the Commission's decision to credit claimant's testimony contrary to the manifest weight of the evidence.

¶ 21 Moreover, even if we were to discount claimant's testimony, what would remain is a conflict between the opinions of Glaser and Lanoff. As noted above, the Commission set forth, in detail, the reasons it rejected Lanoff's opinions. As such, we cannot say that Lanoff is so compelling as to render the Commission's decision to accept Glaser's opinions contrary to the manifest weight of the evidence.

¶ 22 Criticizing the Commission’s determination that the record fails to document a history of previous complaints, respondent disingenuously points to what it terms claimant’s “right lower back pain.” Respondent asserts (without explanation) that “[t]he only possible conclusion is that [claimant’s] continued symptoms following the accident are merely a continuation of his chronic pain from prior to the accident date.” How pain in the right lower back is relevant to the condition of claimant’s thoracic spine is not immediately apparent to us. Undoubtedly, claimant had a preexisting condition that affected part of his back, but there is no indication of a preexisting condition in the part of the back at issue here. Moreover, even if there were, the mere existence of a preexisting condition does not preclude recovery under the Act. See *Sisbro, Inc. v. Industrial Comm’n*, 207 Ill. 2d 193, 207 (2003).

¶ 23 Respondent cites *Ingalls Memorial Hospital v. Industrial Comm’n*, 241 Ill. App. 3d 710 (1993), in support of its position. That case involved a claimant who was involved in an automobile accident that was not work related subsequent to the claimant’s work related accident. In other words, that case involved the effect of an intervening cause on an existing condition. See *Ingalls Memorial Hospital*, 241 Ill. App. 3d at 718-19. *Ingalls Memorial Hospital* provides little guidance here, even analogously. In this case, there was evidence that claimant had not experienced previous problems with his thoracic spine. As such, the effect of a car accident on an existing condition—to which *Ingalls Memorial Hospital* speaks—is not at issue here.

¶ 24

IV. CONCLUSION

¶ 25 In light of the foregoing, the decision of the circuit court of Du Page County confirming the decision of the Commission is affirmed. This cause is remanded for further proceedings in accordance with *Thomas*, 78 Ill. 2d 327.

¶ 26 Affirmed and remanded.