

2015 IL App (4th) 140460WC-U
No. 4-14-0460WC
Order filed November 13, 2015

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).

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

William Gross,)	Appeal from the Circuit Court
)	of Sangamon County
Plaintiff-Appellant,)	
)	
v.)	No. 13-MR-294
)	
THE ILLINOIS WORKERS COMPENSATION)	
COMMISSION, <i>et al.</i>)	
)	Honorable
(Dan Rutherford and Freeman United Coal)	John P. Schmidt,
Mining Co., 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 Illinois Workers' Compensation Commission's decision was contrary to the manifest weight of the evidence where the clearly evident, plain, and substantial evidence established claimant suffered a disablement during the relevant statutory period set forth in the Illinois Workers' Occupational Disease Act.
- ¶ 2 In a previous appeal, we reversed a decision of the Illinois Workers' Compensation Commission (Commission), as the Commission erroneously determined that claimant William

Gross's condition of ill being was not causally related to his employment where the weight of the evidence clearly indicated otherwise. We remanded to the Commission "for a determination of whether disablement exists and, if so, the nature and extent of the disability. The Commission determined that disablement did not occur until after the relevant 2-year statutory period (see 820 ILCS 310/1(f) (West 2008)), which barred recovery under the Illinois Workers' Occupational Disease Act (Act). It based this decision on its finding that claimant "did not have [sic] complaints of shortness of breath to any to any medical providers until he saw Dr. Houser on January 10, 2006." It discounted claimant's testimony that he had been experiencing shortness of breath for a year prior to January 2006 because, it was "not supported by the medical records." The Commission's finding lacks support in the record; hence, we reverse and remand.

¶ 3 Having set forth the relevant background of this case during the initial appeal, we will not do so again here. See *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, ¶¶ 2-18. Rather, we will discuss any additional facts necessary to our resolution of the issues before us as we encounter them. We now turn to the merits of the Commission's decision.¹

¶ 4 At issue here is whether claimant suffered a disablement within the time period set forth in section 1(f) of the Act (820 ILCS 310/1(f) (West 2008)). That section provides as follows:

"No compensation shall be payable for or on account of any occupational disease unless disablement, as herein defined, occurs within two years after the last day of the last exposure to the hazards of the disease, except in cases of occupational disease caused

¹ We note that respondent has failed to provide citation to the actual pages of much of the authority upon which it relies. Such citation is helpful to the court and removes any ambiguity as to what portion of a case a party is relying on to support its arguments.

by berylliosis or by the inhalation of silica dust or asbestos dust and, in such cases, within 3 years after the last day of the last exposure to the hazards of such disease and except in the case of occupational disease caused by exposure to radiological materials or equipment, and in such case, within 25 years after the last day of last exposure to the hazards of such disease.” 820 ILCS 310/1(f) (West 2008).

Claimant’s last day of employment with respondent was November 7, 2003, making that the last day of his exposure to coal dust. Therefore, any disablement would have to have occurred by November 7, 2005, for it to be compensable.

¶ 5 A “disablement” is defined in the Act as follows:

“ ‘Disablement’ means an impairment or partial impairment, temporary or permanent, in the function of the body or any of the members of the body, or the event of becoming disabled from earning full wages at the work in which the employee was engaged when last exposed to the hazards of the occupational disease by the employer from whom he or she claims compensation, or equal wages in other suitable employment; and “disability” means the state of being so incapacitated.” 820 ILCS 310/1(e) (West 2008).

Note that the statute is written disjunctively so that a claimant may prevail by proving an impairment in the body of some sort *or* in his or her ability to earn full wages. See 820 ILCS 310/1(e) (West 2008). Whether a claimant has suffered a disablement within the meaning of the Act is a question of fact subject to review using the manifest-weight standard. *Plasters v. Industrial Comm’n*, 246 Ill. App. 3d 1, 8 (1993). Therefore, we will disturb such a determination only if an opposite conclusion is clearly apparent. *Teska v. Industrial Comm’n*, 266 Ill. App. 3d 740, 741-42 (1994). While we owe great deference to a decision of the Commission regarding a

factual issue, where its decision is contrary to the manifest weight of the evidence, it is our duty to reverse. See *Kawa v. Illinois Workers' Compensation Comm'n*, 2013 IL App (1st) 120469WC, ¶ 79. In this case, we find that the clearly evident, plain, and substantial evidence compels us to conclude that an opposite conclusion is clearly apparent to the one reached by the Commission.

¶ 6 The Commission ruled that claimant failed to prove a disablement occurring within two years of his last date of exposure, *i.e.*, his last date of employment with respondent. The entirety of its rationale follows:

“Based on the medical records, the Commission finds [claimant] did not have [sic] complaints of shortness of breath to any to any medical providers until he saw Dr. Houser on January 10, 2006. [Claimant] did not testify that he retired due to to any breathing problems. His last exposure was on November 7, 2003. Two years after that last exposure would be November 7, 2005.

The Commission finds that [claimant] failed to prove disablement occurred within two years after the last day of the last exposure to the hazards of the disease. [Claimant's] history to Dr. Houser that he had been ‘out of breath’ for over the past year is not supported by the medical records. [Claimant] did have episodes of bronchitis prior to November 7, 2003, but he had no complaints of shortness of breath, except on January 21, 2003 when he had another myocardial infarction on January 12, 2003 and reported he could not breathe, but was improving. The Commission denies [claimant's] claim.”

Initially, we note that the Commission's observation that claimant did not retire due to breathing problems would only be pertinent to whether claimant proved his claim by showing he was disabled from earning full wages. Moreover, it has been held that the fact that a claimant

voluntarily retires for reasons that are not health related does not bar an award under the Act. *General Steel Industries v. Industrial Comm’n*, 49 Ill. 2d 552, 554 (1971). Further, as the Commission placed great weight on the absence of complaints regarding shortness of breath, implicit in its finding is that a disablement occurred once claimant made such complaints. The Commission found claimant made such complaints in January 2006. Thus, the Commission found that disablement occurred approximately two months after the period set forth in section 1(f) of the Act. 820 ILCS 310/1(f) (West 2008).

¶ 7 Here, the Commission’s finding that claimant did not suffer “an impairment or partial impairment, temporary or permanent, in the function of the body or any of the members of the body” (820 ILCS 310/1(e) (West 2008)) rests solely on its rejection of claimant’s testimony that he experienced shortness of breath for a year prior to his January 10, 2006, visit to Houser based on its observation that this testimony was not corroborated by other medical records (obviously, it was mentioned in the medical records from this visit). However, it is well settled that “a claimant may recover on his own testimony without corroboration.” *Old Ben Coal Co. v. Industrial Comm’n*, 198 Ill. App. 3d 485, 492 (1990). Moreover, there was significant other evidence of “impairment or partial impairment, temporary or permanent, in the function of the body or any of the members of the body,” specifically, claimant’s lungs.

¶ 8 The Commission discounted claimant’s reports of shortness of breath around the time of his myocardial infarction; however, Houser testified that a chronic lung disease would aggravate a heart condition. In addition to the complaints of claimant’s that the Commission discounted, claimant further testified that he was experiencing difficulties breathing when going up the stairs while still in respondents employ in 1999. From the first time he noted a problem breathing in

1999, his condition has worsened. A pulmonary function study performed in January 2006 indicated claimant had COPD.

¶ 9 As was noted at oral argument, Houser diagnosed COPD secondary to coal dust exposure and smoking (claimant quit smoking in 1999. Respondent's expert, Dr. Renn, agreed that the pulmonary function study indicated COPD; however, Renn believed that it traced back to claimant's smoking prior to 1999. Therefore, the Commission's finding entails that claimant was exposed to the two causes of his COPD prior to 1999 when he smoked and before November 2003 (his last date of employment with respondent), which then lay dormant for two to six years. Then it suddenly manifested itself in January 2006 (coincidentally, two months after the period set forth in the statute) when it was confirmed by objective testing as agreed by both Houser and Renn. We need not abandon our common sense at the door to the courthouse. See *People v. Greene*, 50 Ill. App. 3d 872, 875 (1977) (quoting *People v. Cobetto*, 66 Ill. 2d 488, 491 (1977)); *Hobgood v. Illinois Gaming Board*, 731 F. 3d 635, 646 (7th Cir. 2013).

¶ 10 In sum, the Commission's decision rests on far too slender of a reed to stand. That claimant's complaints to Houser were uncorroborated by other evidence (beyond Houser's records) is simply an insufficient basis to reject claimant's claim in light of the entirety of the record, which included evidence of problems dating back to at least 1999, objective testing, and the time line. As such, an opposite conclusion to the Commission's is clearly apparent. We therefore reverse the judgment of the circuit court of Sangamon County confirming the Commission's decision and remand for further proceedings.

¶ 11 Reversed and remanded.