2015 IL App (4th) 140655WC-U
No. 4-14-0655WC

FILED
November 9, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

WILLIAM ALLEN,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Sangamon County.
	)	
v.	)	No. 13-MR-460
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al.*,	)	Honorable
	)	Leslie Graves,
(Freeman United Coal Mining Co., 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 determination that the claimant did not suffer from chronic bronchitis arising out and in the course of his employment was not against the manifest weight of the evidence where medical evidence was presented that he suffered from intermittent upper respiratory infections.

¶ 2 The claimant, William Allen, filed an application for adjustment of claim against the Freeman United Coal Mining Company, seeking benefits under the Illinois Worker's

Occupational Diseases Act (the Act) (820 ILSC 310/1 *et seq*. (West 2006)). The claim proceeded to an arbitration hearing, and the arbitrator found that the claimant did not sustain an occupational disease that arose out of and in the course of his employment and that his current condition of ill-being was not causally related to his employment. The claimant appealed to the Illinois Workers' Compensation Commission (Commission), which affirmed the arbitrator. The claimant filed a timely petition for review in the circuit court of Sangamon County, which confirmed the Commission's decision. The claimant appeals.

¶ 3 **BACKGROUND**

¶ 4 The following factual recitation is taken from the evidence presented at the arbitration hearing on June 12, 2012. The claimant originally made claims for coal workers' pneumoconiosis and chronic bronchitis. At oral argument he abandoned the claim for coal workers' pneumoconiosis, therefore, we only set forth the facts relevant to his chronic bronchitis claim.

¶ 5 The claimant was born June 18, 1945, and was 66 years old at the time of the arbitration hearing. He admitted smoking on and off since age 18. He testified that he worked for 32 years as a coal miner and that he spent 31 of those years working underground. He last worked for the employer on August 29, 2007, the date the mine closed.

¶ 6 The claimant testified that the employer recalled him to work, but he chose not to return because he was in the process of retiring. He stated that he chose to retire because

he "was short of breath" and was "coughing all the time being in the rock dust and coal dust." He stated that his coughing and shortness of breath both started after he had been working in the mine about half his career. The symptoms worsened throughout his coal mining career and have remained stable since he left the mine. In the last four years he worked, his cough became severe; his sputum was black; and, as he continued mining, his sputum thickened. After he left the mines, his sputum changed color to white and his cough remained at the same level as before. He stated that, during the time he worked for the employer, he had the opportunity to undergo screening chest x-rays to determine whether he had black lung, and he opted not to participate in the screenings. On June 26, 2009, he had a screening chest x-ray and was diagnosed with coal workers' pneumoconiosis.

¶ 7 Donald Kahl testified that he worked with the claimant. He stated that the claimant coughed "quite a bit" and that he spit out black phlegm.

¶ 8 The claimant's Illini Medical Associates medical records were admitted into evidence. On December 29, 2000, he was examined complaining of head and chest congestion. The patient notes indicate that he had a cough that produced yellow mucus for about one week. On January 14, 2002, he complained of an upper respiratory infection since Christmas and that he coughed up yellow phlegm. On January 3, 2006, he complained of "head fullness" for two days and cough. The doctor noted decreased air entry at the bases of the lungs. He was diagnosed with an upper respiratory infection and cough and told to quit smoking. On October 16, 2006, he reported head and chest congestion. The doctor noted decreased air entry bilaterally. He was diagnosed with an upper respiratory infection. He testified that he did not complain to Dr. Sweeney, his

primary treating physician at Illini Medical Associates, about his persistent cough because he could breathe, and he was not the type of person who complained.

¶ 9 The claimant's medical records from the Springfield Clinic were admitted into evidence. Dr. Edward Braud, the physician who treated the claimant for prostate carcinoma, examined him numerous times from 2006 through 2008. During an April 24, 2006, examination, he denied any pulmonary symptoms, and Dr. Braud noted that his chest fields were clear. Dr. Braud examined him numerous times between May 8, and August 30, 2006, and noted that his lung fields were clear. Dr. Shanahan wrote in his patient notes dated September 28, 2006, that the claimant denied any breathing problems. On December 6, 2006, the claimant had a chest x-ray because his wife complained that he was short of breath. Dr. Braud wrote in his report that the x-ray revealed no abnormality. On March 5, 2007, Dr. Alec Chanpong examined the claimant. The claimant reported some shortness of breath, which Dr. Chanpong attributed to his smoking and his weight. Dr. Chanpong noted that the claimant smoked one pack of cigarettes per day and chewed two cans of tobacco per week. He noted that the claimant’s lungs were clear to auscultation. Dr. Braud examined the claimant on March 11, June 6, and September 6, 2007, and noted that his chest fields were clear. On December 6, 2007, Dr. Braud examined the claimant. He reported shortness of breath after climbing stairs. Dr. Braud found that his lungs were clear to auscultation bilaterally without wheezes, rales, or rhonci, and that his percussion was equally resonant bilaterally. In an examination on January 23, 2008, he denied cough, congestion, hemoptysis, or dyspnea. Dr. Braud noted that his lungs were clear to auscultation bilaterally without wheezes, rales, or rhonci, and that the percussion was equally resonant

bilaterally. On March 7, 2008, Dr. Braud noted that his chest was normal to percussion and his lungs were clear to auscultation. On September 10, 2008, Dr. Edward Braud noted that his lung fields were clear.

¶ 10 Dr. Robert Cohen testified by evidence deposition. He is the medical director of the pulmonary physiology and rehabilitation section as well as the Black Lung Clinic at Stroger Hospital of Cook County. Dr. Cohen examined the claimant on June 26, 2009. The examination included a pulmonary function and cardiopulmonary exercise test. He testified that on physical examination, the claimant had no significant findings. Dr. Cohen stated that the maximal exercise test showed a drop in partial pressure of oxygen at peak exercise, which was a sign of abnormal gas exchange. He testified that the claimant's exercise testing was maximal, and that while he had a drop in partial pressure of oxygen at peak exercise, it did not prevent him from attaining a work capacity that he would expect from a normal, healthy, 64-year-old man. He averred that the claimant could perform heavy manual labor. The resting pulmonary function test was slightly suboptimal. Dr. Cohen testified that the claimant's spirometry, lung volumes, and blood gases were normal and that there was no evidence of an obstruction or a restriction.

¶ 11 Dr. Cohen testified that he diagnosed the claimant with chronic bronchitis based on the history the claimant provided. The claimant told Dr. Cohen that since age 35 he has had a cough productive of black sputum and that he coughs every morning. Since he retired, he coughs up white phlegm instead of black phlegm, but his cough has otherwise remained unchanged. He complained of shortness of breath and wheezing with air temperature changes, particularly cold air. He told Dr. Cohen that he did not have shortness of breath with exertion. His wife reported that he breathes "hard" after walking

one block but that he can continue walking. Dr. Cohen testified that he attributed the claimant's chronic bronchitis to his 32 years of coal mine dust exposure and his 37 years of smoking.

¶ 12 Dr. Cohen testified that, based on a reasonable degree of medical certainty, the claimant had chronic bronchitis caused by his 32 years of exposure to coal mine dust as well as his 37 years of smoking. His diagnosis of chronic bronchitis was based on the history the claimant gave of cough and sputum over a certain period of time with a certain frequency. He stated that the claimant does not have a totally disabling impairment, but he does have pulmonary impairment.

¶ 13 Dr. Cohen testified that he did not review any treatment records in this case. He testified that his opinion would not be affected by entries of clear lungs in treatment records for other purposes, no complaints of shortness of breath, and x-rays that were not B-readings.

¶ 14 Dr. David Rosenberg, a board certified pulmonologist and a B-reader since 2000, testified by evidence deposition. He testified that, at the employer's request, he reviewed the claimant's medical records, including Dr. Meyer's records, Dr. Cohen's records, and Dr. Smith's records. He did not examine the claimant. Dr. Rosenberg reviewed the claimant's x-rays dated December 6, 2006, and December 21, 2007.

¶ 15 Dr. Rosenberg testified that the claimant's treatment records did not show cough and sputum production on a chronic basis. Based on his review of the claimant's medical records dating back to 2000, he felt that the claimant had intermittently suffered from respiratory tract infections.

¶ 16 Dr. Rosenberg reviewed the results of the pulmonary function study performed by Dr. Cohen. He averred that the claimant showed no evidence of restriction or obstruction because his total lung capacity and his forced vital capacity were normal. While the claimant's partial pressure of oxygen fell minimally in association with exercise, he had normal exercise capacity. Dr. Rosenberg testified that the drop in partial pressure of oxygen was of a minor degree and that some healthy individuals experience the same drop in partial pressure of oxygen. Dr. Rosenberg stated that the cause was undetermined. He opined that there was no pulmonary cause for the claimant's shortness of breath. He agreed with Dr. Cohen that the claimant was capable of heavy manual labor. Dr. Rosenberg opined that the claimant did not have a chronic respiratory condition or impairment related to his employment in the coal mines.

¶ 17 The arbitrator found that the claimant did not sustain an occupational disease that arose out of and in the course of his employment and that his current condition of ill-being was not related to his employment. The arbitrator noted that the claimant was seen periodically by his treating physician for various health issues, which included pulmonary symptoms. He did complain of coughing and sputum production; however, none of the records contain any notations that the sputum was black in color. His treating physicians diagnosed him with upper respiratory infections and recommended that he quit smoking.

¶ 18 The claimant sought review of this decision before the Commission. The Commission affirmed and adopted the arbitrator's decision. The claimant sought judicial review of the Commission's decision in the circuit court of Sangamon County. The circuit court confirmed the Commission's decision. The claimant now appeals. We affirm.

¶ 19 **ANALYSIS**

¶ 20 The claimant argues that the Commission's determination that he did not suffer from chronic bronchitis was against the manifest weight of the evidence. In an occupational disease case, the claimant bears the burden of proving that he suffers from an occupational disease and that a causal connection exists between his disease and his employment. *Freeman United Coal Mining Co. v. Illinois Workers' Compensation Comm'n,* 2013 IL App (5th) 120564WC, ¶ 21, 999 N.E.2d 382. Whether an employee suffers from an occupational disease and whether a causal connection exists between the disease and the employment are questions of fact. *Id*. It is the Commission's function to decide questions of fact, judge credibility of witnesses, and resolve conflicting medical evidence. *Id*. The Commission's determination of a question of fact will be disturbed on review only if it is against the manifest weight of the evidence. *Id*. For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Id*.

¶ 21 wThe claimant argues that Dr. Rosenberg's opinion that he did not have chronic bronchitis was a subjective belief based upon guesswork. He asserts that it is impossible to reach an informed conclusive occupational disease opinion based on treatment records and that Dr. Rosenberg did not examine him.

¶ 22 While it is true that Dr. Rosenberg did not examine the claimant, he reviewed the claimant's medical records dating back to 2000, including the records provided by Dr. Cohen. Dr. Rosenberg testified that, based on his examination of the medical records, the claimant did not have a cough and sputum production on a chronic basis. He opined that the claimant suffered from intermittent respiratory tract infections. Dr. Cohen testified

that his diagnosis of chronic bronchitis was based on the history the claimant gave of cough and sputum over a certain period of time with a certain frequency. He did not review any treatment records.

¶ 23 The claimant's medical records dating back to 2000 were admitted into evidence. These show coughing producing yellow phlegm on December 29, 2000, and January 14, 2002. He was diagnosed with upper respiratory infections on January 3, and October 16, 2006. On December 6, 2006, his wife complained that he was short of breath. A chest x-ray taken that day showed no abnormality. On March 5, 2007, he complained of shortness of breath. Dr. Chanpong noted that his lungs were clear to auscultation and attributed it to his smoking and weight. On December 6, 2007, he complained of shortness of breath after climbing stairs. Dr. Braud found his lungs clear to auscultation bilaterally without wheezes, rales, or rhonci. Dr. Rosenberg testified that, based on his review of the claimant's medical records, the claimant was diagnosed with a sinus infection on November 27, 2007, an upper respiratory infection and coughing on January 3, 2006, November 16, 2006, and November 27, 2007, and acute bronchitis on January 31, 2008. Between 2006 and 2008, the claimant was found to have clear lung fields on about 20 occasions.

¶ 24 The Commission found that the claimant failed to prove that he suffered from chronic bronchitis arising out of and in the course of his employment. It is within the province of the Commission to weigh the evidence and to decide among competing inferences. *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 187, 866 N.E.2d 191, 207 (2007). This court will not reject permissible inferences drawn by the Commission simply because different inferences might be drawn from the same facts, nor will this

court substitute its judgment for that of the Commission on such matters unless its findings are contrary to the manifest weight of the evidence. *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, ¶ 26, 993 N.E.2d 473. The medical records dating back to 2000 do not show cough and sputum production on a consistent basis. In an approximately nine year period, the claimant was treated nine times for a cough or upper respiratory infection and complained three times of shortness of breath. He was found to have clear lungs in at least 20 examinations. Dr. Rosenberg found that the claimant did not have chronic bronchitis but suffered from intermittent upper respiratory infections. We cannot say that the Commission's decision was against the manifest weight of the evidence.

¶ 25 **CONCLUSION**

¶ 26 For the foregoing reasons, we affirm the judgment of the circuit court of Sangamon County.

¶ 27 Affirmed.