2015 IL App (4th) 140992WC-U
No. 4-14-0992WC
Order filed November 13, 2015

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

JERALD BURNETT,	)	Appeal from the Circuit Court
	)	of Macoupin County
Plaintiff-Appellant,	)	
	)	
v.	)	No. 14-MR-13
	)	
THE ILLINOIS WORKERS COMPENSATION COMMISSION, *et al.*	)	
	)	
	)	Honorable
(Dan Rutherford and Monterey Coal Co. Appellees).	)	Kenneth R. Deihl,
	)	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 not contrary to the manifest weight of the evidence where the Commission's decision was supported by the opinions of three doctors and conflicting evidence did not lead to an opposite conclusion that was clearly apparent.

¶ 2 Claimant, Jerald Burnett, appeals a decision of the Illinois Workers' Compensation Commission (Commission) denying him benefits in accordance with the Illinois Workers'

Occupational Disease Act (Act) (820 ILCS 310/1 *et seq.* (West 2008)). The Commission found the claimant failed to prove he suffered from an occupational disease. It found insufficient evidence of coal workers' pneumoconiosis (CWP) and that any claim related to COPD was time barred. Claimant attacks those decisions and raises a number of additional issues. We hold that the Commission did not err in either case and that any additional issues are moot. Accordingly, we affirm.

¶ 3 The Commission set forth the basis for its rejection of claimant's claim as follows. First, it recognized that claimant did "have an obstructive airways problem." However, it then (correctly) noted that the three-year limitations period applied to COPD claims rather than the five-year period that applies in cases of CWP. See *Carter v. Illinois Workers' Compensation Comm'n*, 2014 IL App (5th) 130151WC, ¶¶ 19-20. It further noted that several experts traced claimant's COPD to his tobacco use. Next, the Commission credited the opinions of respondent's experts (Dr. Tuteur, Dr. Wiot, and Dr. Shipley). It explained that claimant's treating physician never actually diagnosed CWP and that records from his cardiologists do not mention such a diagnosis. It found the evaluation of respondent's expert (Tuteur) "somewhat more thorough" than that of claimant's expert, Dr. Paul. It further noted that claimant suffered from several other conditions, namely, obesity, osteoarthritis, heart problems, and cancer. Ultimately, the Commission determined that claimant failed to carry his burden of proving that he developed an "occupational lung disease as a result of any exposures in the course of his employment with the [r]espondent." The circuit court of Macoupin County confirmed the Commission's decision, and claimant sought relief in this court.

¶ 4 When a party challenges a factual decision of the Commission, we apply the manifest-weight standard on review. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006). Hence, we

will reverse such a decision only if an opposite conclusion is clearly apparent. *Id*. We may not reweigh evidence or reject reasonable inferences by the Commission simply because other inferences are possible. *Id*. Weighing evidence, assessing credibility, drawing inferences from the evidence, and resolving conflicts in the record are primarily matters for the Commission. *C. Iber & Sons, Inc. v. Industrial Comm'n*, 81 Ill. 2d 130, 136 (1980). We owe great deference to the decisions of the Commission, particularly regarding medical issues where its expertise is well established. *Bennett Auto Rebuilders v. Industrial Comm'n*, 306 Ill. App. 3d 650, 655 (1999); *Long v Industrial Comm'n*, 76 Ill. 2d 561, 566 (1979). A claimant bears the burden of proving every element of his or her claim. *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 867 (2010).

¶ 5 One element a claimant must prove to prevail on a claim under the Act, *inter alia*, is that he or she suffers from an occupational disease. *Bernardoni v. Industrial Comm'n*, 362 Ill. App. 3d 582, 596 (2005). Here, both parties presented substantial evidence on this issue. Of course, the evidence was conflicting, and the Commission's decision turned largely on resolving those conflicts in the record.

¶ 6 In support of its decision, the Commission relied largely upon the opinions of respondents three expert witness, Tuteur, Wiot, and Shipley. Tuteur examined claimant on May 12, 2010. In his deposition, Tuteur testified that claimant had osteoarthritis and was obese. When claimant was not engaged in a weight-bearing activity (riding a bicycle), his performance was near the normal range. Claimant also had atrial fibrillation as the result of a decreased ejection fraction. Claimant's heart problems affected his exercise tolerance. Pulmonary function testing showed a mild obstruction, which did not improve with the use of a bronchodilator. Tuteur opined that claimant did not have CWP sufficient to "produce clinical symptoms,

physical examination abnormalities, impairment of pulmonary function or radiographic changes." Tuteur considered a diffusing capacity of 70% to be the lower limit of normal, and claimant's was measured at 64% and 70%. People with CWP should avoid exposure to coal dust. Tuteur acknowledged that a person with normal pulmonary function testing could nevertheless have CWP. Moreover, testing only identifies the type of abnormality rather than its etiology.

¶ 7 Wiot is a B-reader. He reviewed a "PA and lateral chest xray [*sic*] of" claimant taken on May 12, 2010, and authored a letter expressing his opinion. He stated, "There is no evidence of coal worker's pneumoconiosis." He also noted that claimant's heart was "slightly enlarged in its traverse diameter." Shipley, also a B-reader, reviewed a CT scan that was performed on August 31, 2012. He stated that "[t]here are no upper zone predominant small or large rounded opacities to suggest coal worker's pneumoconiosis." He noted bilateral irregular opacities in the lower zone of claimant's lungs and three lobulated noncalicified pulmonary nodules." He continued, "These do not have the typical appearance of large opacities of pneumoconiosis because of their location, the lack of small rounded opacities in the background, and the presence of air bronchograms." We also note that claimant denied shortness of breath during various visit to his treating physician, until he began experiencing bronchial asthma, sinusitis and COPD.

¶ 8 Thus, the Commission's decision rests firmly on the opinions of these three doctors. Undoubtedly, there was evidence to the contrary in the record. For example, claimant's treating physician, Dr. Chopra, stated claimant had emphysema and COPD, which would be exacerbated by exposure to coal dust. Chopra also noted signs of fibrosis in a June 2011 chest x-ray. Dr. Paul, who examined claimant at his attorney's request on January 22, 2008, noted claimant reported being out of breath after walking a block or two. A physical examination revealed

wheezing and rhonchi. Chest film showed small nodules throughout the lung, and a pulmonary function study showed a mild to moderate obstruction. Paul opined that claimant had CWP, emphysema, and pulmonary fibrosis. Dr. Smith, a B-reader, interpreted an x-ray and CT scan as showing CWP in all lung zones.

¶ 9 In any event, as noted, it is primarily the function of the Commission to resolve conflicts in the evidence. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). This is particularly true when medical opinion evidence is at issue. *Id*. These principles of review are dispositive here. Quite simply, though evidence exists to support claimant's position, none of it is so compelling or so much more persuasive than the evidence relied on by the Commission that an opposite conclusion to the Commission's is clearly apparent.

¶ 10 Claimant makes a number of arguments as to why this result should not obtain.[1] He points out that there was evidence of fibrosis, which is consistent with CWP. This merely created a conflict in the evidence of the Commission to resolve. He complains that Tuteur and Shipley did not account for abnormalities seen in his treatment records. Generally, if a defect exists in the basis for an expert's opinion, it goes to the weight to which it is entitled. See *In re L.M.*, 205 Ill. App. 3d 497, 512 (1990). Claimant recognizes this and asserts that Tuteur's opinion should be given no weight. That, however, is primarily a matter for the Commission, and indeed, one upon which we owe the Commission great deference. *C. Iber & Sons, Inc.*, 81 Ill. 2d 130, 136 (1980); *Long*, 76 Ill. 2d 561, 566 (1979). For the same reason, we reject claimant's attempts to discredit Tuteur for his failure to mention the medications claimant's was

[1] Claimant cites decisions of the Commission, which is also improper. See *S & H Floor Coverings, Inc. v. Illinois Workers' Compensation Comm'n*, 373 Ill. App. 3d 259, 266 (2007). We strike such references in claimant's brief and the material relying upon them.

taking in his report (claimant makes a number of similar arguments, which we do not find persuasive).

¶ 11 Claimant complains that the Commission found Chopra's opinion entitled to little weight because Chopra never actually diagnosed claimant with CWP; however, claimant also concedes that this is true and it seems to us an adequate basis for the Commission to question his opinion. He further asserts that the Commission's finding that Tuteur's evaluation of claimant was more thorough than Paul's is erroneous. Even if claimant is correct in this assessment, we note that claimant bore the burden of proof in the proceedings below (*R & D Thiel*, 398 Ill. App. 3d at 867), so it is not sufficient for claimant to establish that Tuteur's opinion was not entitled to more weight than Paul's. Claimant further complains that the Commission noted his "obesity, osteoarthritis, heart problems, and cancer." He asserts that CWP can coexist with such conditions. While true, the question was not whether it *could* coexist, it is whether it *did* coexist, a proposition claimant has not established. In short, these, and other similar arguments raised by claimant, are essentially a lengthy invitation for us to reweigh the evidence and substitute our judgment for that of the Commission. This, of course, we may not do. *Setzekorn v. Industrial Comm'n*, 353 Ill. App. 3d 1049, 1055 (2004).

¶ 12 Having concluded that the Commission did not err in finding claimant failed to prove that he developed an "occupational lung disease as a result of any exposures in the course of his employment with the [r]espondent," we reject claimant's argument that his claim for compensation for COPD was timely because it was a sequela of his purported CWP. This, according to claimant, would make the longer 5-year limitation period (820 ILCS 310/6(e) (West 2008)) applicable. See *Carter*, 2014 IL App (5th) 130151WC, ¶¶ 19-20. This argument necessarily fails, as its key premise is that claimant established that he had CWP. We, however,

have held that the Commission's decision that claimant failed to prove he had CWP is not contrary to the manifest weight of the evidence. All other issues raised by claimant are moot as well.

¶ 13 Accordingly, we affirm the judgment of the circuit court of Macoupin County that confirmed the decision of the Commission in this case.

¶ 14 Affirmed.