2015 IL App (5th) 140139WC-U
No. 5-14-0139WC

Workers' Compensation
Commission Division
Order Filed: April 22, 2015

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

HOLLAND MEDICAL EQUIPMENT,	)	Appeal from the Circuit Court
	)	of Williamson County.
	)	
Appellant,	)	
	)	
v.	)	No. 13-MR-53
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al.*,	)	Honorable
	)	Brad K. Bleyer,
(Brian Salone, Appellee).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The judgment of the circuit court was affirmed where the Commission's determination that the claimant was entitled to vocational rehabilitation services was not contrary to the law and where the Commission's award based on the claimant's self-directed plan was not against the manifest weight of the evidence.

¶ 2 Holland Medical Equipment (Holland) appeals from the circuit court order which confirmed the decision of the Illinois Workers' Compensation Commission (Commission) to award the claimant, Brian Salone, vocational rehabilitation expenses related to his pursuit of a social work degree. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on December 13, 2011. As Holland only disputes the reasonableness of the Commission's vocational rehabilitation award, we briefly summarize the uncontested facts.

¶ 4 On February 5, 2008, the claimant, age 37 at the time of the hearing, was delivering a 170-pound oxygen tank to a patient's home as part of his duties while working for Holland. As he was moving the tank up a stairwell, the claimant injured his lower back. He reported the incident to his supervisor the next day, but he continued working until March 28, 2009, when his treating physician authorized him to work only on a restricted basis. According to the claimant, his supervisor advised him that he could not return to work until he was released to work at full-duty. The claimant testified that the last day he worked for Holland was March 26, 2008, and since then, he had not been paid any temporary total disability (TTD) or maintenance benefits. Holland also had not paid any of the claimant's medical bills, which included services rendered by: Dr. Jeffrey Parks, his family physician; Dr. David Yingling, a neurosurgeon he saw upon referral of Dr. Parks; and Dr. Jeffrey Jones, the neurosurgeon who operated on his lower back three times between October 2009 and January 2010.

¶ 5 Both Dr. Jones and Dr. J. Alexander Marchosky, Holland's independent medical examiner, agreed that the claimant required permanent restrictions on lifting 50 pounds or more and excessive bending or twisting. The parties do not dispute that the claimant would be unable to return to his former line of work and had reached maximum medical improvement (MMI) as of February 18, 2011.

¶ 6 The claimant testified that, sometime in February 2011, he met with Michael McKee, a vocational consultant retained by Holland, but he stated that McKee did not provide him with

any potential employment opportunities and did not provide him with a vocational rehabilitation plan of any kind. He stated that he and McKee discussed his past work experience and "what [he] would like to do," but that he never heard from McKee after the meeting. The claimant stated that, since his employment terminated with Holland, he completed course work toward an associate's degree at John A. Logan College, a community college in Carterville. According to the claimant, he was only 12 credits away from receiving his associate's degree and he planned to pursue a bachelor's degree in social work. The claimant stated that a social work position would fit within his work restrictions.

¶ 7 On cross-examination, the claimant admitted that he had a "patient care certification," which allowed him to "talk and converse" with Holland's patients and recognize their needs. However, he was not questioned about whether this patient care certification allowed him to work in other types of positions. Regarding the cost of his social work education, the claimant testified that he provided that information to his attorney.

¶ 8 Included in the record are transcripts from Logan College which establish the following. The claimant registered for 12 credit hours in Spring 2012 at a cost of $1,139. A transcript report from Logan College, dated November 17, 2011, showed that the claimant had earned a total of 30 credit hours and had a 3.409 grade point average. Additionally, the recommended class work for a bachelor's degree in social work from Southern Illinois University was submitted. The annual cost of attending Southern Illinois University was estimated to be $23,467, which included tuition, fees, room and board, books, and living expenses. For a student not living in a dormitory, the estimated annual cost was $16,819. The records are not clear as to how many credit hours the claimant needed to complete at Southern Illinois University in order

to receive his bachelor's degree in social work. The records also do not list the per-credit-hour cost for either Logan College or Southern Illinois University.

¶ 9 McKee's reports from his initial interview with the claimant and subsequent updates are included in the record. The February 21, through March 11, 2011, report stated that McKee was waiting to receive the claimant's medical records in order to determine what specific vocational services would be helpful.

¶ 10 McKee's next report, for April 23, 2011, through May 13, 2011, stated that, "[d]uring the Initial Vocational Assessment, [the claimant] mentioned that he would be returning to post-secondary education at John A. Logan College to earn a degree in Social Work." McKee planned to complete a Labor Market Survey "concerning current market activities of Social Worker within a 50 mile radius of Marion, IL."

¶ 11 A report for the time period of May 14, 2011, through June 6, 2011, stated that, on May 16, 2011, McKee completed a labor market survey for the social work field and sent the report to both parties. According to the report, McKee was instructed to suspend further vocational services "until further notice" was received.

¶ 12 The next report in the record covered the dates of June 27, 2011, through July 15, 2011. In this report, McKee stated that "[j]ob search and additional vocational services remain delayed as further medical and legal issues are trying to be resolved before [the claimant] is expected to fully participate with job search endeavors." The same is reported for the date ranges of July 16, 2011, through August 5, 2011; August 6, 2011, through August 26, 2011; and August 26, 2011, through September 16, 2011.

¶ 13 In the report for the date range of October 8, 2011, through October 30, 2011, McKee noted that defense counsel advised that Dr. Marchosky's opinion that the claimant could lift up to 50 pounds should be "utilized when either conducting another Labor Market Survey or providing job placement services" to assist the claimant in returning to work. McKee stated, however, that neither [counsel for Holland] nor the [insurance] adjustor have replied as to which vocational services they want to implement." According to McKee, the claimant's case was getting ready for trial in November, and he planned to discuss the case with counsel for Holland before the trial.

¶ 14 McKee's final report covers the time period between October 31, 2011, and November 18, 2011. In that report, McKee states that he completed a second labor market survey and "transferable skills analysis" which included the opinions of Dr. Marchosky. He forwarded that report to counsel for Holland and Holland's insurance adjustor, noting that that the report concluded "that current employment opportunities" exist for the claimant. McKee further stated that only one prospective employer commented that a social work internship was available for Spring 2012, but that it was expected to be filled by November 15, 2011. According to the report, counsel for Holland and the insurance adjustor would determine the "next plan of action," and McKee would wait for their instructions.

¶ 15 The labor market surveys which McKee referred to in his reports are not included in the record. The record is also lacking any specific information regarding the impact of the claimant's injury on his earning capacity and the affect a social work degree would have on his employability and earning capacity. However, it is undisputed that the claimant had been

earning approximately $35,000 per year at the time of his injury and that he had reached MMI on February 18, 2011, but was unable to return to his former position.

¶ 16 Following a hearing pursuant to section 19(b) of the Workers' Compensation Act (Act) (820 ILCS 305/19(b) (West 2010)), the arbitrator ordered Holland to pay the claimant: TTD benefits in the amount of $452.79 per week for 150 4/7 weeks; the medical expenses listed in his fee schedule, which totaled $232,057.61; maintenance benefits in the amount of $452.79 per week for 42 4/7 weeks; vocational rehabilitation expenses related to the claimant's pursuit of a social work degree; and maintenance benefits in the amount of $452.79 per week until the claimant is placed in the job market.

¶ 17 Regarding the vocational rehabilitation issue, the arbitrator specifically noted that no "vocational rehabilitation plan was undertaken" by Holland and that the claimant had provided documentation related to the social work degree which he intended to obtain from Southern Illinois University, including his transcripts of completed courses and a list of future required courses. Therefore, the arbitrator ordered that Holland "shall provide and pay for vocational rehabilitation to assist the [claimant] to obtain a degree in social work under the program submitted by [the claimant]." Further, the arbitrator ordered Holland to pay the claimant maintenance benefits commencing on December 14, 2011, and "continuing during [the claimant's] vocational rehabilitation as ordered herein and through such time as [the claimant] is placed in the job market."

¶ 18 Holland sought a review of the arbitrator's decision before the Commission. Regarding the vocational rehabilitation issue, Holland argued that "[i]t was error for the Arbitrator to grant rehabilitation where there is no evidence that rehab will increase earning power. *** There was

no evidence on earning power." Holland further argued that the claimant "was not pursuing a college degree" and "made no showing he could not obtain a sedentary job." According to Holland, with the claimant's "high school degree and the college courses he had completed there is nothing that would indicate he was not capable of a sedentary job." On January 30, 2013, the Commission affirmed and adopted the arbitrator's decision.

¶ 19 Holland sought judicial review of the Commission's decision in the circuit court of Williamson County. On March 4, 2014, the circuit court confirmed the decision of the Commission. This appeal followed.

¶ 20 Holland argues that the Commission's vocational rehabilitation award is unreasonable and maintains that we should review the Commission's decision *de novo* because the facts are undisputed. Holland maintains that, given the undisputed facts, the Commission's vocational rehabilitation award is contrary to the law. We disagree.

¶ 21 Awards for vocational rehabilitation are granted pursuant to section 8(a) of the Act (820 ILCS 305/8(a) (West 2010)), which provides that an employer shall compensate an injured employee for treatment, instruction and training necessary for the physical, mental and vocational rehabilitation of the employee. *W.B. Olson, Inc. v. Illinois Workers' Compensation Comm'n*, 2012 IL App (1st) 113129WC, ¶ 32. Vocational rehabilitation may include, but is not limited to, counseling for job searches, supervising a job search program, and vocational retraining including education. 820 ILCS 305/8(a) (West 2010).

¶ 22 Before entering an order for rehabilitation, the evidence must show that rehabilitation is appropriate. *Amoco Oil Co. v. Industrial Comm'n*, 218 Ill. App. 3d 737, 751 (1991). When determining whether rehabilitation is appropriate, certain factors must be considered. *Id.* "The

factors favoring rehabilitation include (1) that the employee's injury caused a reduction in earning power and there is evidence rehabilitation will increase his earning capacity, (2) that the employee is likely to lose job security due to his injury, and (3) that the employee is likely to obtain employment upon completion of rehabilitation training." *Id.* Additional factors to be considered are the costs and benefits to be derived from the program; the employee's work-life expectancy; his ability and motivation to undertake the program; and his prospects for recovering work capacity through medical rehabilitation or other means. *Id.*

¶ 23 The determination of whether a claimant is entitled to an award of vocational rehabilitation benefits is a question of fact to be decided by the Commission, and its finding will not be reversed unless it is against the manifest weight of the evidence. *W.B. Olson*, 2012 IL App (1st) 113129WC, ¶ 31. In resolving such a question, it is the function of the Commission to judge the credibility of the witnesses, resolve any conflicts in the testimony, and draw reasonable inferences from the evidence presented. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 207 (2003); *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). For a finding to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *W.B. Olson*, 2012 IL App (1st) 113129WC, ¶ 31. Where the Commission's decision is supported by competent evidence, its finding is not against the manifest weight of the evidence. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

¶ 24 Contrary to Holland's reliance on *Brais v. Illinois Workers' Compensation Comm'n*, 2014 IL App (3d) 120820WC, *de novo* review is not applicable to our review of the appropriateness of the Commission's vocational rehabilitation award. In *Brais*, we reviewed *de novo* whether the claimant's injury arose out of and in the course of her employment, an issue usually reviewed under the manifest-weight-of-the-evidence standard. *Id.* ¶ 19. We explained that, because the

facts surrounding the claimant's injury were undisputed *and* susceptible to only one single inference, the question in that case was one of law to which *de novo* review applied. *Id.* In this case, the undisputed facts are not susceptible to only a single inference. Therefore, our standard of review is unchanged from the manifest-weight-of-the-evidence standard under which we generally review awards of vocational rehabilitation benefits.

¶ 25 Here, Holland essentially argues that there was no evidence that the benefits of the claimant's obtaining a social work degree outweighed the costs of the program. Holland maintains that, without such evidence, the Commission could not order it to pay for the claimant's educational plan. Holland asserts, that "[m]erely because the vocational consultant did not formulate a plan," the Commission did not have "*carte blanche*" authority to order it to pay for the claimant's educational plan. Instead, Holland states that the Commission should have remanded the case to the arbitrator for "further hearing on the subject of vocational rehabilitation." We disagree.

¶ 26 In *Roper Contracting v. Industrial Comm'n*, 349 Ill. App. 3d 500 (2004), we affirmed the Commission's award of a self-directed vocational rehabilitation program where the employer had failed to provide any services to the claimant. Specifically, we determined that the Commission did not err, as a matter of law, when it concluded that the claimant was entitled to services or when it awarded the claimant maintenance for his "self-created and directed rehabilitation program." *Id.* at 506. Further, we found that the award itself was not against the manifest weight of the evidence where the evidence demonstrated that the claimant's injury harmed his earning capacity and the rehabilitation program would increase it. *Id.*

¶ 27 In this case, the Commission determined that, although Holland retained McKee, it did not actually authorize him to provide any vocational rehabilitation services for the claimant.

Holland also did not issue any written assessment as to its belief that no vocational rehabilitation services were warranted. See 50 Ill. Admin. Code § 7110.10 (West 2012) (rule requiring the employer to prepare a written assessment of the course of medical care, and, "if appropriate, rehabilitation required to return" the claimant to work). Further, the undisputed evidence demonstrated that the claimant could never return to his previous line of work, in which he earned approximately $35,000 per year, and that he could work as a social worker with his current work restrictions if he completed the necessary coursework. The claimant submitted evidence of the estimated cost for his remaining 12 community college credits ($1,191) and the annual tuition for his prospective courses at Southern Illinois University (presumably two additional years at approximately $32,000 as an off-campus student). No other evidence was submitted suggesting that the costs of the claimant's self-directed educational plan outweighed the benefits to his future earning capacity and future employment outlook, especially given his young age and lengthy expected future in the workforce and his proven ability to complete the program. See *Howlett's Tree Serv. v. Indus. Comm'n,* 160 Ill. App. 3d 190, 196 (1987) (affirming award of educational plan for a claimant in his 30's who had demonstrated the desire and ability to complete the program). Under these facts and circumstances, like in *Roper Contracting*, we cannot find that the Commission's conclusion that the claimant was entitled to the vocational rehabilitation services outlined in his self-directed plan is contrary to the law or that its award is against the manifest weight of the evidence.

¶ 28 Affirmed and remanded to the Commission.