2015 IL App (5th) 140219WC-U

FILED: April 23, 2015

NO. 5-14-0219WC

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

NATIONAL FREIGHT INDUSTRIES,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Montgomery County.
	)	
v.	)	No. 13-MR-56
	)	
THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Andrew Smith, Appellee).	)	Honorable Allan F. Lolie, Jr., Judge, Presiding.

JUSTICE HARRIS delivered the judgment of the court.

Presiding Justice Holdridge and Justices Hoffman, Hudson, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: The Commission's determination that claimant's May 2011 work accident was causally connected to his condition of ill-being is supported by the record and neither contrary to law nor against the manifest weight of the evidence.

¶ 2 On June 23, 2011, claimant, Andrew Smith, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2010)), seeking benefits from the employer, National Freight Industries. Following a hearing, the arbitrator determined claimant sustained accidental injuries that arose out of and in the course of his

employment on May 25, 2011, and awarded him (1) 60-5/7 weeks' temporary total disability (TTD) benefits, (2) medical expenses for outstanding bills claimant submitted at arbitration, and (3) prospective medical expenses in the form of surgery recommended by one of claimant's doctors. The Illinois Workers' Compensation Commission (Commission) affirmed and adopted the arbitrator's decision. On judicial review, the circuit court of Montgomery County confirmed the Commission. The employer appeals, arguing the Commission erred in finding claimant's current condition of ill-being was causally connected to his May 25, 2011, work accident. We affirm and remand for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 3 I. BACKGROUND

¶ 4 Claimant worked for the employer as a truck driver. On May 25, 2011, he was driving on a highway in Arkansas when his truck was picked up by a tornado and thrown into a field. Claimant testified the truck landed on its passenger side and he had to cut his seatbelt to get out of the truck. He refused immediate medical treatment but, approximately two days later, noticed "a lot of pains going down both legs." Claimant testified that, prior to his May 25, 2011, accident he was working full duty and "running six days a week 500, 600 miles a day." He denied that he was able to work after his accident, stating he worked "for a little while" but his pain worsened.

¶ 5 Claimant acknowledged that he previously had back surgery in 1995 or 1996. He further acknowledged being involved in two prior work-related accidents resulting in injuries to his lower back—one occurring on November 6, 2006, while he worked for Fischer Lumber and one occurring on December 4, 2008, while working for the employer. Following his November 2006 accident, claimant received medical treatment from Dr. Daniel Kitchens and was given re-

strictions, including no lifting over 20 pounds. On January 19, 2007, claimant began working for the employer. He testified he continued to have problems as a result of his November 2006 injury and, in September 2008, Dr. Kitchens recommended back surgery. On December 4, 2008, the day before he was to have back surgery, claimant was injured while working for the employer. His surgery was cancelled and he underwent further diagnostic testing. In January 2009, claimant began seeing Dr. David Kennedy, a neurosurgeon. In January 2010, Dr. Kennedy performed fusion surgery on claimant at L3-4 and L4-5. Claimant testified he thereafter stopped treating with Dr. Kennedy and was released to return to work. Dr. Kennedy's records reflect he saw claimant on September 23, 2010, and claimant was doing well and able to return to work.

¶ 6 The record shows claimant filed applications for adjustment of claim with respect to both his November 2006 and December 2008 accidents. The Commission issued decisions in connection with those claims and, ultimately, its decisions were reviewed by this court on appeal. On June 13, 2013, we issued an opinion affirming "the Commission's finding that the *** accident of December 4, 2008, constituted an independent, intervening cause which broke the causal connection between claimant's current condition of ill-being and his initial [November 6, 2006,] work injury." *National Freight Industries v. Illinois Workers' Comp. Comm'n*, 2013 IL App (5th) 120043WC, ¶ 33, 993 N.E.2d 473. Thus, claimant's condition of ill-being after his December 2008 accident was causally related to that accident rather than his initial, November 2006 accident.

¶ 7 Relative to the case at bar, claimant testified that, sometime after he was released to return to work by Dr. Kennedy in 2010, he saw Dr. Jerome Epplin, his primary-care physician, for back-related problems. Dr. Epplin referred claimant to Dr. Koteswara Narla, a pain management specialist, whom claimant began seeing on December 8, 2010. Dr. Narla's records

show claimant complained of "lumbar back pain radiating to the anterior aspect with tingling and numbness, right worse than the left side." On February 11, 2011, claimant returned to Dr. Narla, whose impression was "[l]umbar laminectomy and fusion with a 70% improvement, still having the residual pain." He recommended a magnetic resonance imaging (MRI). On April 14, 2011, an MRI was performed on claimant's lumbar spine.

¶ 8 On May 19, 2011, approximately one week before his May 25, 2011, accident, claimant returned to see Dr. Kennedy. He testified he sought medical care because he had pains going down his right leg. Claimant also testified he was concerned because the employer was trying to move him to a position that required him to load and unload freight by hand and he "didn't want to hurt anything or mess [himself] back up again." He denied that, at that time, he was experiencing any pain going down his left leg. Claimant also denied that Dr. Kennedy recommended surgery or that he scheduled any follow-up appointments for claimant. Dr. Kennedy's office note from May 19, 2011, states as follows:

> "[Claimant] returns. When I last saw him on September 23, 2010[,] he was doing well. He did have some lower lumbar pain but was able to return to work. However, over the last two months he has had progressively severe pain in the lower lumbar area and right leg which tends to be worse with walking. ***
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> ***
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> Review of the MRI from April 14, 2011[,] demonstrates significant spinal stenosis at L2-3 (the areas above where the previous operation was). *** [T]his area of stenosis currently is immediately adjacent to the previously operated level.

Impression is that of spinal stenosis with increasingly severe pain. I think that the stenosis is caused by the fusion below. We will see [claimant] back on an as needed basis."

¶ 9 As stated, on May 25, 2011, the work-related accident that is the subject of this appeal occurred. On June 15, 2011, claimant returned to see Dr. Kennedy. He testified he was experiencing severe pain down both legs and lower back pain. Dr. Kennedy's records show claimant provided a history of being "involved in a motor vehicle accident where his truck was apparently hit by high winds and flipped over." Claimant reported "increasingly severe pain in the lower lumbar area and both legs" since that time. On examination, claimant's range of motion in his lumbar spine was significantly reduced. Dr. Kennedy found claimant's condition was "much worse than when [he] saw [claimant] before." He recommended a lumbar myelogram with a follow-up CT scan to assess claimant's structural problems in more detail. Dr. Kennedy also recommended that claimant not work pending further evaluation.

¶ 10 On October 5, 2011, claimant returned to see Dr. Kennedy, who noted claimant's myelogram was performed on August 9, 2011. He found the myelogram demonstrated a "solid fusion at L3-4" but "severe stenosis *** at L2-3 associated with instability" at that level. Dr. Kennedy recommended "removal of instrumentation at the lower levels and decompression and fusion at L2-3 with re-fusion from L2-L5." Further, he stated claimant's "symptoms began in direct relationship to his truck accident which occurred on May 25, 2011," and he opined claimant's current pain and need for surgical treatment were directly related to that accident. Claimant continued to follow up with Dr. Kennedy and reported pain in his lower back and legs. Dr. Kennedy continued to recommend surgical intervention and that claimant remain off work.

¶ 11 At arbitration, claimant submitted Dr. Kennedy's deposition, taken April 10, 2012,

into evidence. Dr. Kennedy testified claimant's complaints after his May 25, 2011, accident were worse than before the accident. Specifically, he noted, on May 19, 2011, claimant predominantly complained of severe lumbar pain with mild right leg pain. However, on June 15, 2011, claimant's back pain was much worse and he had bilateral leg pain that was substantially worse. Dr. Kennedy testified that following claimant's May 19, 2011, visit, he did not believe claimant required surgery and, instead, recommended anti-inflammatory medication for symptomatic relief.

¶ 12 Dr. Kennedy testified he reviewed the actual films of claimant's August 2011 CT myelogram, which showed severe stenosis at L2-3, the area just above the location of claimant's prior fusion. He also emphasized that testing showed instability, meaning "there was movement of L2 relative to L3 between flexion and extension." Dr. Kennedy believed the presence of instability was new and "likely due to trauma." He also agreed that there was a difference in pathology between claimant's August 2011 CT myelogram and his April 2011 MRI, stating as follows:

> "Number one, I think the degree of stenosis is more severe. At least part of the stenosis is produced by disc herniation, which was not visible on the prior [April 2011] MRI. And I think most significantly, there was instability demonstrated on the standing portion of the study where flexion and extension views were done where there was abnormal motion present."

Dr. Kennedy testified that the disc herniation shown on claimant's August 2011 testing would have shown up on his April 2011 MRI if it had been present. Further, he believed the only treatment for claimant was surgical intervention. Specifically, Dr. Kennedy testified claimant

needed "to have his prior instrumentation removed, to be decompressed at L2-3, and then to be re-instrumented probably from L2-L5."

¶ 13 Dr. Kennedy testified he previously performed surgery on claimant in the form of a lumbar decompression and fusion at L3-4 and L4-5. He clarified that, during the prior surgery, he "fuse[d] two levels in [claimant's] lower lumbar spine, and [claimant's] current problem is immediately above that level." Further, Dr. Kennedy testified claimant's condition of ill-being after May 25, 2011, was different than his condition of ill-being prior to that date. He opined that claimant's condition after May 25, 2011, was not related to claimant's prior surgery and, instead, caused by the May 25, 2011, accident. Dr. Kennedy provided the basis for his opinions, stating as follows:

> "Well number one, he's worse, considerably worse from a clinical standpoint following a significant motor vehicle accident, you know, where he was pinned in the truck and had to be extracted, so this was no slip and fall. Additionally, the degree of stenosis is much worse than compared to the MRI, and significantly there's instability or abnormal movement at the L2-3 level demonstrated on the myelogram, I think which is very likely to be traumatic in nature."

¶ 14 In October 20, 2011, claimant saw Dr. David Lange, an orthopedic spine surgeon, at the employer's request. At arbitration, the employer submitted two reports prepared by Dr. Lange, as well as his April 17, 2012, deposition. Dr. Lange identified claimant's condition of ill-being as degenerative spondylolisthesis with spinal stenosis. He opined that condition preexisted claimant's May 25, 2011, accident. Further, Dr. Lange did not believe the May 25, 2011, acci-

dent caused or aggravated claimant's condition. He based that opinion on a review of Dr. Kennedy's May 19, 2011, office note, and consideration of the symptoms claimant presented on that date. Dr. Lange testified he had the opportunity to review Dr. Kennedy's office notes from both May 19 and June 15, 2011. He found that, in general, the examination findings were the same on both dates.

¶ 15 On cross-examination, Dr. Lange agreed that claimant needed surgery. Further, he acknowledged that he did not review either the films or the report from claimant's April 2011 MRI. Additionally, Dr. Lange testified that "the most important part" of his opinion finding no causal connection was that claimant saw Dr. Kennedy on May 19, 2011, and Dr. Kennedy noted significant spinal stenosis with increasingly severe pain.

¶ 16 On October 1, 2012, the arbitrator issued his decision in the matter, finding claimant sustained accidental injuries that arose out of and in the course of his employment on May 25, 2011. As stated, the arbitrator awarded claimant (1) 60-5/7 weeks' TTD benefits, (2) medical expenses for the outstanding bills claimant submitted at arbitration, and (3) prospective medical expenses in the form of the surgery recommended by Dr. Kennedy. In reaching his decision, the arbitrator addressed the employer's reliance on *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 821 N.E.2d 807 (2005), and its argument that claimant's May 25, 2011, accident failed to break the chain of causation between claimant's condition of ill-being and his previous December 2008 work-related accident. The arbitrator stated as follows:

> "The issue before the Arbitrator is whether, as the *Vogel* opinion points out, the accident of May 25, 2011[,] was a causative factor in [claimant's] current condition of ill[-]being and his need for surgery. The accident does not have to be the sole cause. It

> does not matter whether the accident broke the causal chain between [claimant's] pre and post accident condition. What matters is whether the accident was a causal factor."

The arbitrator then expressly determined that claimant's "current condition of ill-being is causally related to the May 25, 2011, motor vehicle accident."

¶ 17 On April 26, 2013, the Commission affirmed and adopted the arbitrator's decision. It also remanded the matter pursuant to *Thomas*, 78 Ill. 2d 327, 399 N.E.2d 1322, for a determination of further amounts of compensation to which claimant was entitled, if any. On judicial review, the circuit court of Montgomery County confirmed the Commission.

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 On appeal, the employer argues the Commission's finding that claimant's May 25, 2011, work accident was causally connected to his current condition of ill-being was contrary to law and against the manifest weight of the evidence. Specifically, it contends claimant's condition at the time of arbitration would not have developed but for the medical treatment claimant received to treat his December 2008 work-related injury. Thus, the employer maintains claimant's May 2011 work accident did not break the chain of causation between claimant's December 2008 accident and his current condition of ill-being.

¶ 21 "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). "The 'arising out of' component is primarily concerned with causal connection" and is satisfied where it is "shown that the injury had its origin in some risk con-

nected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Sisbro*, 207 Ill. 2d at 203, 797 N.E.2d at 672.

¶ 22 Additionally, where an employee has a preexisting condition, "recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor." *Sisbro*, 207 Ill. 2d at 205, 797 N.E.2d at 672-73. In such cases, "recovery will depend on the employee's ability to show that a work-related accidental injury aggravated or accelerated the preexisting disease such that the employee's current condition of ill-being can be said to have been causally connected to the work-related injury." *Sisbro*, 207 Ill. 2d at 204-05, 797 N.E.2d at 672. "Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was a causative factor in the resulting condition of ill-being." *Sisbro*, 207 Ill. 2d at 205, 797 N.E.2d at 673.

¶ 23 "The question of whether a causal relationship exists between a claimant's employment and his workplace injury is a question of fact to be resolved by the Commission [citation], and its resolution of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence [citations]." *Village of Villa Park v. Workers' Compensation Comm'n*, 2013 IL App (2d) 130038WC, ¶ 19, 3 N.E.3d 885. "It is the Commission's duty to resolve conflicts in the evidence, particularly medical opinion evidence." *Bernardoni v. Industrial Comm'n*, 362 Ill. App. 3d 582, 597, 840 N.E.2d 300, 312 (2005). "For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent." *Mansfield v. Workers' Compensation Comm'n*, 2013 IL App (2d) 120909WC, ¶ 28, 999 N.E.2d 832. Further, "[a] finding is not against the manifest weight of the evidence if there was sufficient evidence in the record to support the Commission's determination." *Certified Testing v. Industrial Comm'n*, 367 Ill. App. 3d 938, 944-45, 856 N.E.2d 602, 608 (2006).

¶ 24 Here, the Commission determined claimant's condition of ill-being was causally related to his May 25, 2011, work accident. It relied on Dr. Kennedy, who opined claimant's condition of ill-being after May 25, 2011, was caused by his May 2011 accident and not related to the previous surgery claimant underwent to treat his December 2008 injuries. We find the record supports the Commission's decision and it was not against the manifest weight of the evidence.

¶ 25 As the Commission noted, Dr. Kennedy based his opinion, in part, on the change in claimant's symptoms following his May 2011 accident. Evidence showed Dr. Kennedy saw claimant shortly before and after his May 2011 accident. Approximately one week prior to the accident, claimant reported lower back and right leg pain; however, Dr. Kennedy recommended no treatment and that claimant follow up with him on an "as needed basis." Following the May 2011 accident, claimant returned to Dr. Kennedy who noted claimant had "increasingly severe pain in the lower lumbar area and both legs." On examination, Dr. Kennedy found significantly reduced range of motion in claimant's lumbar spine and described claimant's condition as being "much worse." Further, the record reflects Dr. Kennedy's treatment recommendations changed after claimant's May 2011 work accident, showing he continued to have follow-up visits with claimant and prescribed surgical intervention.

¶ 26 Dr. Kennedy also based his opinion on changes reflected in claimant's diagnostic tests. The record shows Dr. Kennedy reviewed claimant's April 2011 MRI and his August 2011 myelogram and CT scan, the latter of which Dr. Kennedy recommended after claimant's May 2011 accident. Reviewing claimant's April 2011 MRI, Dr. Kennedy noted "significant spinal stenosis at L2-3." Conversely, he found claimant's myelogram and CT scan showed "severe stenosis *** at L2-3 associated with instability." During his deposition, Dr. Kennedy opined the

instability he observed was new and "likely due to trauma." Further, he noted claimant's August 2011 tests revealed a disc herniation that had not been present at the time of the April 2011 MRI and which produced "[a]t least part of [claimant's] stenosis."

¶ 27 On appeal, the employer argues the Commission erred in relying on Dr. Kennedy's opinions over those of Dr. Lange, who evaluated claimant at the employer's request. Dr. Lange determined claimant's condition of ill-being preexisted his May 2011 accident and was not accelerated or aggravated by that accident. Although the record clearly contains conflicting medical opinions, it was the Commission's responsibility to weigh the evidence and resolve any conflicts. In finding Dr. Kennedy's opinion more persuasive, the Commission noted he was the only doctor to review claimant's diagnostic films and the record shows Dr. Lange acknowledged during his deposition that he did not review either the films or the report from claimant's April 2011 MRI. The record fails to reflect the Commission's decision to rely on Dr. Kennedy's opinions over those given by Dr. Lange was against the manifest weight of the evidence. The employer's arguments otherwise amount to a request that we reweigh the evidence presented, which is not the appropriate function of this court on review. See *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64, 862 N.E.2d 918, 924 (2006) ("A reviewing court will not reweigh the evidence, or reject reasonable inferences drawn from it by the Commission, simply because other reasonable inferences could have been drawn.").

¶ 28 The employer also argues the Commission erred in finding claimant's May 25, 2011, accident broke the chain of causation to claimant's prior accidental injuries. It contends that even if claimant's May 2011 accident exacerbated his condition, there was no break in causation with claimant's prior December 2008 accident and, thus, no compensation owed to claimant in connection with the May 2011 accident.

¶ 29 Initially, we note the record fails to reflect the Commission actually determined claimant's May 2011 accident was an intervening accident that broke the chain of causation between claimant's December 2008 accident and his condition of ill-being. In affirming and adopting the arbitrator's decision, the Commission stated as follows:

> "The issue *** is whether, as the *Vogel* opinion points out, the accident of May 25, 2011[,] was a causative factor in [claimant's] current condition of ill[-]being and his need for surgery. The accident does not have to be the sole cause. It does not matter whether the accident broke the causal chain between [claimant's] pre and post accident condition. What matters is whether the accident was a causative factor."

These statements indicate the Commission rejected the notion that it was required to find the May 2011 accident broke the chain of causation with claimant's earlier accident to award compensation based on the May 2011 accident. Further, contrary to the employer's assertions, we do not find the Commission's statements were an "improper recitation of the law." Rather, the Commission merely set forth well-settled principles of law when addressing the specific issue before it—whether a causal connection existed between claimant's condition of ill-being and his May 25, 2011, work accident. See *Sisbro*, 207 Ill. 2d at 205, 797 N.E.2d at 673 ("Accidental injury need not be the sole causative factor, nor even the primary causative factor, as long as it was a causative factor in the resulting condition of ill-being.").

¶ 30 Additionally, we note this case is factually distinguishable from the circumstances presented in *Vogel*, 354 Ill. App. 3d at 782-84, 821 N.E.2d at 809-11, where the claimant was involved in multiple nonwork-related accidents after having suffered a work-related injury that

required surgery. Here, claimant sustained multiple employment-related accidents *prior* to the subject accident. Although the Commission could have found claimant's May 2011 accident was an intervening accident that broke the chain of causation between his December 2008 accident and condition of ill-being, under the circumstances of this appeal, it was not required to do so in order for claimant to prevail. A claimant's condition of ill-being may be causally connected to more than one event or factor, including multiple work-related accidents. In this case, the fact that the Commission did not foreclose claimant's December 2008 accident as a causative factor in his condition of ill-being was not fatal to its decision.

¶ 31 What is important in the case at bar, is that the record supports the Commission's finding that claimant's condition of ill-being was causally related to his May 2011 accident. Further, we note that even if the Commission had found as the employer suggests—that claimant's May 2011 accident broke the chain of causation from his prior work accident—its decision would not be against the manifest weight of the evidence. Dr. Kennedy expressly opined claimant's condition was related to his May 2011 accident and not his previous surgery. Additionally, the record reflects that, after claimant's May 2011 accident, his symptoms changed and his pain worsened. Moreover, there was a change in pathology on claimant's diagnostic films, including a disc herniation not seen on claimant's April 2011 MRI and instability, which Dr. Kennedy opined was new and related to trauma.

¶ 32 Here, the Commission's findings were supported by the record. Its decision was not against the manifest weight of the evidence.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm the circuit court's judgment confirming the Commission's decision and remand for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327,

399 N.E.2d 1322.

¶ 35 Affirmed and remanded.