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2015 IL App (5th) 140528WC-U

FILED: November 10, 2015

NO. 5-14-0528WC

IN THE APPELLATE COURT

OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

ST. ELIZABETH'S HOSPITAL,)	Appeal from the
Appellant,)	Circuit Court of
v.)	St. Clair County.
THE ILLINOIS WORKERS' COMPENSATION)	No. 14-MR-100
COMMISSION <i>et al.</i> (Katherine Bergmann,)	Honorable
Appellee).)	Stephen P. McGlynn,
)	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 committed no error in finding a causal connection existed between claimant's work for the employer and her low back condition of ill-being or by awarding claimant benefits under the Workers' Compensation Act in connection with that condition.

¶ 2 On September 10, 2012, claimant, Katherine Bergmann, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2012)), seeking benefits from the employer, St. Elizabeth's Hospital. Following a hearing, the arbitrator determined claimant sustained an accidental injury to her lower back that arose out

of and in the course of her employment on January 13, 2012. He awarded claimant past and prospective medical expenses, as well as 34 weeks' temporary total disability (TTD) benefits from June 6, 2012, through January 29, 2013.

¶ 3 The Illinois Workers' Compensation Commission (Commission) affirmed and adopted the arbitrator's decision. Pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980), it also remanded the matter to the arbitrator to determine additional amounts of compensation, if any, to which claimant is entitled. On judicial review, the circuit court of St. Clair County confirmed the Commission's decision. The employer appeals, arguing the Commission's (1) finding that a causal connection existed between claimant's low back condition of ill-being and her employment was against the manifest weight of the evidence and (2) award of benefits, including past medical expenses, prospective medical expenses, and TTD benefits was against the manifest weight of the evidence. We affirm.

¶ 4 I. BACKGROUND

¶ 5 At the January 2013 arbitration hearing, claimant testified she worked for the employer as a surgical nurse. She described a history of back-related issues, agreeing she underwent a fusion at the L-5, S-1 level of her spine in the 1980s. Claimant asserted she fully recovered from that procedure. In August 2011, she sought treatment for back-related issues from Dr. Joseph Yazdi, whose records show claimant complained of "an almost two year history of lower back pain radiating down to her bilateral buttocks and into the groin." At that time, Dr. Yazdi noted a magnetic resonance imaging (MRI) showed "severe, degenerative, changes in the facets at L4-5" as well as "grade 1, almost grade 2 spondylolisthesis" at the same level. His impression was "[s]ignificant motion at L4-5 causing [claimant's] back, bilateral buttock[,] and groin pain." Dr. Yazdi recommended surgery in the form of "a posterior fusion with pedicle screw fixation,"

which he performed on claimant on September 8, 2011.

¶ 6 At arbitration, claimant testified surgery relieved her pain, she "was able to walk steps [she] couldn't do before," and "could do things [she] couldn't do for a long time." On September 28, 2011, claimant returned to see Dr. Yazdi, who noted claimant was "progressing well" and "happy with the results of her surgery." Claimant reported the pain in her left leg was gone but she "continue[d] to have some pain across her low back." Dr. Yazdi recommended physical therapy.

¶ 7 On October 26, 2011, Dr. Yazdi noted claimant was "doing significantly better than prior to the surgery," her back pain was "significantly better," and her left leg pain was gone. He reviewed plain films of claimant's lumbar spine, finding they showed proper placement of all instrumentation. Dr. Yazdi stated he was happy with claimant's recovery so far but noted light-duty work was unavailable to her. Dr. Yazdi recommended work conditioning.

¶ 8 On October 31, 2011, claimant underwent a work conditioning evaluation. Her pain was noted as being 2 out of 10 at its best, 10 out of 10 at its worst, and 2 out of 10 at the time of the evaluation. Additionally, claimant's symptoms were described as a weak back and a "[d]ull ache and soreness" that, at its worst, was a severe ache and pain. On November 21, 2011, claimant underwent a work conditioning reevaluation. Again, she reported that her pain was 2 out of 10 at its best and 10 out of 10 at its worst. At the time of the reevaluation, claimant complained of pain at 2 or 3 out of 10. Further, her symptoms were described as a "[d]ull ache soreness," pain going down to her right buttocks with "tightness and deep/burning," and pain across her back. On November 22, 2011, claimant returned to see Dr. Yazdi, who noted as follows:

"[Claimant] had work conditioning in order to get her ready for work. However she is unable to lift more than 10 or 15 pounds.

She does not have any leg pain, but she has a constant, dull, aching pain in her back that gets worse with increased activity. She was unable to meet any of the long-term goals set by therapy. On examination, she can stand up and ambulate. Strength is intact. Plain films of the lumbar spine show proper placement of all instrumentation. She needs to go back to work on Monday, otherwise she loses her job. So, we will release her back to work with no restrictions. However, I gave her a prescription for an LSO brace to wear at work and also a prescription for a magnetic brace to help her fuse faster. This may help her with her pain, as well."

¶ 9 On cross-examination, claimant agreed that she was still experiencing pain when undergoing her work conditioning evaluation. She denied that she experienced the maximum amount of pain she reported, *i.e.*, 10 out of 10, every day. However, claimant agreed that she sometimes experienced pain at that level. Additionally, she acknowledged that she reported to her physical therapist that she was having constant pain that was a 2 or 3 out of 10.

¶ 10 On December 1, 2011, claimant returned to full-duty work for the employer. She testified that because her back injury was not work-related she would not have been allowed to return to work with restrictions and in a light-duty capacity. On cross-examination, claimant testified she usually wore the magnetic back brace prescribed by Dr. Yazdi at home but not at work.

¶ 11 Upon returning to work, claimant's job duties included direct bedside care of patients, passing out medications, starting IVs, sliding patients up in bed with sheets or bed pads, helping

patients get out of bed and into chairs, and pushing beds and stretchers. Claimant testified that, when performing her full job duties after surgery, her work included the regular lifting and pushing of patients that she normally had. She denied having any issues with radiating pain when working after her surgery.

¶ 12 Claimant testified she was involved in a work accident on January 13, 2012. She described that accident, testifying as follows:

"I was at the end of my shift and I was sitting at the nurses' station at our desk and we have a chart rack. I was checking the charts, doing our normal end of shift chart check, checked the doctors [*sic*] orders off. I signed off the chart, put it up in the rack. And as I was putting the chart in the rack, the chair rolled out from underneath me. I tried to catch myself and down I went on the floor hard, which is a concrete floor."

Claimant stated she landed on her buttocks, left hip area, and back. After falling, claimant felt pain in her low back, left leg to above her knee, and right shoulder. She denied ever previously experiencing the pain in her left leg, asserting that with her prior back issues, the radiating pain primarily stopped at her buttock area.

¶ 13 Claimant testified she immediately sought medical care by going to the emergency room. On January 24, 2012, claimant returned to see Dr. Yazdi. He noted claimant had been doing well with minimal pain that was about 2 out of 10 in severity until she fell off a chair at work on January 13. Dr. Yazdi stated that, since her fall, claimant had "been complaining of pain from her left lower back area radiating over to the left groin." Claimant underwent physical therapy and also continued to follow up with Dr. Yazdi. On February 17, 2012, Dr. Yazdi noted

claimant continued to have "quite a lot of symptoms from her left lower back radiating over to her left groin" and that she experienced "some numbness in the left groin and lateral thigh." On February 21, 2012, his records show claimant reported lower back pain across her back with pain radiating over to the left groin and lateral thigh. Dr. Yazdi recommended light-duty work.

¶ 14 Claimant testified Dr. Yazdi referred her to Dr. William Thom at Associated Physicians. She stated Dr. Thom gave her various injections and facet blocks. Claimant testified she felt about 25% relief from her pain that lasted a couple of days before "the pain was right back."

¶ 15 On March 19, 2012, claimant underwent an x-ray of the lumbar spine at Dr. Yazdi's request. A radiology report noted the posterior fusion at L4-5 was unremarkable and that claimant's surgical hardware appeared intact. On March 20, 2012, Dr. Yazdi noted claimant continued to have left lateral thigh numbness and mid-lumbar pain radiating over to the left entire buttock area. He stated claimant reported "quite a bit of buttock and left thigh symptoms." Dr. Yazdi recommended an MRI of claimant's lumbar spine, noting "the plain films that she had done *** show good placement of all the instruments" and "[n]othing has shifted." An MRI report dated March 24, 2012, showed a "[p]rior posterior fusion with hardware in place" at the L4-5 level of claimant's spine.

¶ 16 On May 22, 2012, Dr. Yazdi noted claimant continued to complain of severe lower back pain and the injections she received had not helped her condition. His "main hypothesis" was that claimant's "fusion probably got disrupted when she fell at work," which he stated could only be fixed by an interbody fusion.

¶ 17 On May 23, 2012, claimant was evaluated by Dr. Daniel Kitchens at the employer's request. She provided a history of falling at work on January 13, 2012, when her chair rolled out from underneath her. Claimant reported experiencing worsening pain in her lower back, across

her buttocks, and down into her left groin and left thigh. Dr. Kitchens reviewed the x-ray of claimant's lumbar spine dated March 19, 2012, and found a "loosening around the left L5 pedicle screw." He also reviewed claimant's March 24, 2012, MRI and noted "some loosening of the left L5 pedicle screw." Dr. Kitchens found claimant's workup revealed "no evidence of fusion at L4-L5." He opined that the nonunion at L4-5 was a complication of claimant's September 2011 surgery and not causally related to her January 13, 2012, work accident. Further, he opined claimant's "prognosis for progression of fusion [was] poor given the paucity of bone graft material evidence and evidence of loosening of the hardware at L5." With respect to her January 2012 "work incident," Dr. Kitchens did not believe claimant required any additional treatment and opined she had reached maximum medical improvement.

¶ 18 On June 11, 2012, a CT scan was performed on claimant's lumbar spine and showed stable L4 anterolisthesis and mild left neuroforaminal stenosis at L4-5. On June 13, 2012, Dr. Yazdi saw claimant and noted she had been having "quite a lot of symptoms" since her fall at work and that conservative treatment had not helped. He further noted claimant was evaluated at the employer's request. Dr. Yazdi stated he reviewed claimant's CT scan and found as follows:

"You can somewhat see where my attempted fusion was, which is at the level of the facets at L4-5. You can see it better on the right than the left. However, it is significantly obscured by the artifact. I do not see any signs of loosening of the screws. In fact, you can follow the path of the screw all the way from the rod all the way to the tip of all 4 screws in coronal and sagittal paths and I do not see any halo around them. Her story sounds like and looks like somebody who had trauma after surgery and the trauma prevented

her from any further healing, so now she has a pseudoarthrosis and the only way to really fix it is to do a lumbar fusion from a different approach.

¶ 19 On June 28, 2012, Dr. Yazdi performed an interbody fusion and lateral screw fixation at the L4-5 level of claimant's spine. Claimant testified she continued to experience back pain and pain down her left leg following her second surgery. She denied that her pain had improved. Claimant also continued to follow up with Dr. Yazdi, who recommended physical therapy. On September 19, 2012, he noted claimant had "not had any significant changes to her pain or numbness of the left lateral thigh." He also authored a note stating claimant was unable to work and had been unable to work since June 6, 2012. Dr. Yazdi's records reflect he last saw claimant on January 22, 2013. At that time, he continued to find claimant unable to work and recommended she follow up in three months.

¶ 20 Claimant stated she performed light-duty work for the employer after her January 2012 accident until June 6, 2012. She testified she tried passing out medication and starting IVs but experienced a lot of pain and had difficulty working. She testified she had been off work since June 6, 2012, and walked with a cane prescribed by Dr. Thom due to left leg weakness.

¶ 21 At arbitration, claimant submitted Dr. Yazdi's evidence deposition, taken November 16, 2012. Dr. Yazdi testified he was a board certified neurosurgeon. He described his treatment of claimant prior to her January 2012 accident, stating that the fusion he performed on claimant in September 2011 "takes on the average of six, maybe seven months for it to finally complete itself." He stated that, for claimant, it could take a little bit longer because she was diabetic. Further, Dr. Yazdi stated that, although "[y]ou don't know if it's fusing until it's fused," he would hope for a patient to experience less pain and increased mobility. Dr. Yazdi believed claimant

did really well after her surgery, stating her pain was under "very good control" and had lessened. He felt comfortable releasing her to return to work in December 2011, and testified he had the opportunity to observe her at work as they both worked at the same hospital.

¶ 22 Dr. Yazdi testified claimant returned to see him after her January 13, 2012, work accident and complained of significant pain in her left lower back over to her left groin. He noted that her pain was "basically half of what she had prior to her surgery" since, before her surgery, she reported pain on both sides. Dr. Yazdi opined that claimant's condition after January 2012 was pseudoarthrosis, meaning "the fusion at the facet will not take." He also believed claimant's condition was related to her January 13, 2012, work accident, opining that the trauma she experienced after her surgery prevented any further healing. Dr. Yazdi based his opinion on having seen similar circumstances before; claimant's "acute re-exacerbation of all those same symptoms that she had before"; and that claimant was doing well before her fall, had returned to work, and "was doing pretty decent" at work.

¶ 23 Dr. Yazdi acknowledged that any loosening of screws is one sign of pseudoarthrosis. However, he stated he reviewed claimant's CT scan and disagreed with any opinion that the scan showed "lucency" around the screws, stating "there absolutely was not a single bit of lucency around any of the four screws that we had in the spine from the surgery time to the CAT scan time." Dr. Yazdi testified as follows:

"If somebody goes on to not fuse, what happens is you develop micromotion around the screws because there isn't the bony fusion, so that all the stress ends up on the screws. And if there's micromotion, eventually what happens—imagine if this is the bone that's supposed to be around the screw. And appeared if there's a

little toggling here, that bone that used to be this tight then gets spread out a little bit around, a little bit farther out, and you see lack of bone, which they call a halo because it looks black on the MRI, around that screw head. And I did not see that around any of the four screws."

¶ 24 Dr. Yazdi further opined that the second surgery he performed on claimant in June 2012 was causally related to claimant's January 2012 work accident. He stated claimant's accident "led to that [initial] fusion between the facets to not take, so you have to find a different way to do a fusion."

¶ 25 Dr. Yazdi testified he continued to consider claimant to be temporarily totally disabled, noting she still had a lot of difficulty walking. Claimant also continued to have thigh weakness and numbness. At the time of his November 2012 deposition, Dr. Yazdi testified it was too soon to have a prognosis for claimant, stating "we don't even know if the fusion is going to take yet because that's going to be sometime in February or March." He stated claimant had not yet reached maximum medical improvement.

¶ 26 The employer submitted Dr. Kitchens' deposition, taken November 28, 2012. Dr. Kitchens testified he was a neurosurgeon and evaluated claimant. He agreed that, following claimant's September 2011 surgery, medical records showed she was improving and she returned to work in December 2011. With respect to claimant's condition after January 13, 2012, Dr. Kitchens diagnosed her with a nonunion at L4-5 and opined the nonunion was the cause of her lower back pain. He reiterated his opinion that claimant's March 19, 2012, x-ray of the lumbar spine showed "some loosening of the hardware" and a haloing around the screw on the left side at L5. Dr. Kitchens testified he did not believe that trauma suffered from a fall from a normal

height chair could lead to a nonunion or loosening of any hardware and, thus, cause claimant's symptoms. He testified as follows:

"A nonunion indicates that there is no bone growth. If she had a fusion prior to the fall then that would be the same as saying that she has complete bone union or like a complete bone connection. The only way to destroy a bone connection would be [to] fracture the bone, a significant force that would cause a fracture through the bone. She did not have significant force to cause any fracture in the lumbar spine. If the theory is that she had a fusion and then had trauma that then caused a nonunion, then that force that would have to be applied would be a force that created a fracture through the bone itself or the bony fusion that she supposedly had."

Dr. Kitchens testified he found no medical evidence that claimant had a fusion or healing of a bone to form a fusion prior to January 2012. He further opined that claimant's work accident was not the cause of her pain after January 2012.

¶ 27 Dr. Kitchens testified that the type of fusion claimant underwent in September 2011 was a "major factor in the nonunion." Other risk factors claimant had for nonunion included morbid obesity and diabetes. Additionally, he opined claimant would have needed the second surgery she underwent in June 2012 regardless of her January 13, 2012, fall at work.

¶ 28 On cross-examination, Dr. Kitchens testified he did not believe it was important how claimant was doing after she returned to work following her September 2011 surgery. He stated reduced pain complaints would initially be expected because placement of the screws and

instrumentation "holds that level together." Dr. Kitchens testified that "it is typically the history of a nonunion that there's initially good relief of the pain or good pain control until eventually when the hardware starts to fail." He noted that hardware would usually begin to fail five or six months after surgery. Further, Dr. Kitchens agreed he did not know when the loosening of the screw at L5 occurred, only that it was some time before the date of the March 2012 x-ray. He did not believe it was important precisely when that hardware began to fail.

¶ 29 On April 2, 2013, the arbitrator issued his decision. As stated, he found claimant sustained a work-related back injury on January 13, 2012, and awarded her past and prospective medical expenses, as well as 34 weeks' TTD benefits from June 6, 2012, through January 29, 2013. On February 3, 2014, the Commission affirmed and adopted the arbitrator's decision. The employer sought review and, on September 29, 2014, the circuit court of St. Clair County confirmed the Commission's decision.

¶ 30 This appeal followed.

¶ 31 **II. ANALYSIS**

¶ 32 On appeal, the employer challenges the Commission's finding that claimant is entitled to compensation under the Act. Although it does not dispute that claimant was involved in a work-related accident on January 13, 2012, when she fell at work after a chair rolled out from underneath her, it maintains that accident was not a cause of the condition of ill-being in her lower back. The employer argues claimant's lower back condition after January 13, 2012, was causally related to a preexisting condition of ill-being in claimant's lower back that was unrelated to work and an unsuccessful fusion surgery performed by Dr. Yazdi in September 2011.

¶ 33 "To establish causation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injury." *Tolbert v. Illinois Workers'*

Compensation Comm'n, 2014 IL App (4th) 130523WC, ¶ 54, 11 N.E.3d 453. "It is not necessary to prove that the employment was the sole causative factor or even that it was the principal causative factor, but only that it was a causative factor." *Tolbert*, 2014 IL App (4th) 130523WC, ¶ 54, 11 N.E.3d 453.

¶ 34 "Whether a causal relationship exists between a claimant's employment and his injury is a question of fact to be resolved by the Commission, and its resolution of such a matter will not be disturbed on appeal unless it is against the manifest weight of the evidence." *Dig Right In Landscaping v. Illinois Workers' Compensation Comm'n*, 2014 IL App (1st) 130410WC, ¶ 27, 16 N.E.3d 739. A finding is contrary to the manifest weight of the evidence where an opposite conclusion from that reached by the Commission is clearly apparent. *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, ¶ 26, 993 N.E.2d 473. "The appropriate test is not whether this court might have reached the same conclusion, but whether the record contains sufficient evidence to support the Commission's determination." *Kawa v. Illinois Workers' Compensation Comm'n*, 2013 IL App (1st) 120469WC, ¶ 78, 991 N.E.2d 430. Further, "it is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence." *Dig Right In Landscaping*, 2014 IL App (1st) 130410WC, ¶ 27, 16 N.E.3d 739.

¶ 35 Here, the Commission determined claimant's lower back condition of ill-being was causally related to her January 13, 2012, work accident. After reviewing the record, we find that it contains sufficient support for the Commission's determination and an opposite conclusion is not clearly apparent.

¶ 36 The record shows claimant suffered from a lower back condition of ill-being that was unrelated to her employment and, in September 2011, underwent spinal fusion surgery

performed by Dr. Yazdi. Claimant presented evidence that her condition improved following surgery and, in December 2011, she returned to work and performed her regular work duties without incident. On January 13, 2012, claimant fell at work when a chair rolled out from underneath her. Following that incident, she immediately sought medical care and consistently reported worsening symptoms associated with her lower back. The symptoms she experienced after January 13, 2012, were also different than the symptoms she experienced prior to her September 2011 surgery. In particular, prior to her initial surgery, claimant complained of "lower back pain radiating down to her bilateral buttocks and into the groin." After January 2012, her symptoms involved only her left side and extended to her left thigh.

¶ 37 Additionally, Dr. Yazdi's medical opinions supported claimant's position at arbitration. Dr. Yazdi testified the fusion he performed on claimant in September 2011 could take in excess of six to seven months "to finally complete itself." He opined that after January 2012, claimant suffered from pseudoarthrosis, meaning "the fusion at the facet will not take." Dr. Yazdi believed that condition was causally related to claimant's January 2012 work accident, opining that the trauma she experienced as a result of her fall prevented further healing from her September 2011 surgery. He based his opinion on his own experience and having previously seen similar circumstances; claimant's "acute re-exacerbation" of symptoms; and that claimant had returned to work and "was doing pretty decent" prior to her fall.

¶ 38 On appeal, the employer argues the Commission erroneously relied on Dr. Yazdi's opinions over those rendered by its medical expert, Dr. Kitchens, who found no causal connection existed between claimant's employment and her lower back condition of ill-being. However, as noted, it is the Commission's function to judge the credibility of witnesses and resolve conflicting medical evidence. Here, the Commission expressly found Dr. Yazdi more

credible than Dr. Kitchens, stating as follows:

"Dr. Kitchens opined that he observed loosening of the left L5 pedicle screw when he reviewed the x-ray of March 19, 2012, and the MRI of March 24, 2012; however, neither the radiologist nor Dr. Yazdi, both of whom reviewed the same studies, made such a finding. Further, other diagnostic studies were performed on [claimant] both before and after the accident of January 13, 2012, and no loosening of any of the pedicle screws were noted either by the radiologist or Dr. Yazdi. When Dr. Yazdi was deposed, he specifically noted that there was no loosening of any of the screws."

Again, the record supports the Commission's factual findings and we observe no error in the manner in which it judged witness credibility and resolved the conflicting medical evidence.

¶ 39 As the record contains sufficient evidence to support the Commission's decision, it was not against the manifest weight of the evidence. We note that, on appeal, the employer also asserts a challenge to the benefits awarded to claimant by the Commission. However, its brief indicates the sole basis for its challenge is its contention that the Commission erroneously found the existence of a causal connection. For the reasons already stated, the Commission committed no error and the employer's challenge to the Commission's award of benefits is also without merit.

¶ 40

III. CONCLUSION

¶ 41 For the reasons stated, we affirm the circuit court's judgment and remand for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327, 399 N.E.2d 1322.

¶ 42 Affirmed and remanded.