2018 IL App (1st) 163346WC-U

FILED: February 2, 2018

NO. 1-16-3346WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

LEOLA HARRELL,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellant,	)	Cook County.
	)	
v.	)	No. 16-L-50071
	)	
THE ILLINOIS WORKERS'	)	Honorable
COMPENSATION COMMISSION, *et al.*	)	Ann Collins-Dole,
(City of Chicago, Appellee).	)	Judge, presiding.

JUSTICE OVERSTREET delivered the judgment of the court.

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

ORDER

¶ 1 *Held*: The Illinois Workers' Compensation Commission's finding that the claimant reached maximum medical improvement (MMI) on January 17, 2007, was not against the manifest weight of the evidence; therefore, its denial of temporary total benefits after January 17, 2007, was proper. The Commission erroneously denied medical benefits after the claimant reached MMI based on an incorrect conclusion that medical benefits must end when an injured worker reaches MMI. The cause is remanded for further proceedings to determine whether the claimant is entitled to compensation

> for permanent disability and whether the claimant incurred any reasonable and necessary medical benefits after January 17, 2007.

¶ 2 The claimant, Leola Harrell, appeals the decision of the circuit court of Cook County that confirmed the unanimous decision of the Illinois Workers' Compensation Commission (Commission), in favor of the employer, City of Chicago. This case, which involves a work accident that occurred on December 11, 2002, has a long procedural history, most of which is not relevant to this appeal. On February 27, 2015, this court entered an unpublished order in which we recited the procedural history in detail, and in which we ultimately held that the Commission, following a second 19(b) hearing in this case, violated the law-of-the-case doctrine because the Commission relied on a doctor's opinion (that of Dr. Walsh) that was substantially the same as another doctor's opinion that was rejected by the Commission following the first 19(b) hearing. See *Harrell v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 140762WC-U, ¶¶ 72-81. Accordingly, we, *inter alia*, remanded to the Commission with directions "to exclude Dr. Walsh's reports, testimony, and opinions from its reconsideration," and to re-determine "all of the issues presented at the second 19(b) hearing," which included "the claimant's entitlement to further TTD benefits and medical expenses, whether the claimant has reached MMI, and the claimant's entitlement to the vocational assessment ordered by the Commission in the first 19(b) proceeding." *Id.* at ¶ 82.

¶ 3 On December 23, 2015, the Commission entered its unanimous decision and opinion on review on remand. Therein, the Commission noted that it had reviewed, *inter alia*, the treatment records of the claimant's primary care physician, Dr. Catherine

Anichini, and that the Commission found "support" to conclude that the claimant had reached maximum medical improvement (MMI) and was not entitled to further temporary total disability (TTD) benefits or further medical benefits. The Commission ordered, *inter alia*, that the claimant be paid TTD and medical expenses through January 17, 2007, which signified the end of "the period of temporary total incapacity for work." The Commission also ordered that the case be remanded to the arbitrator "for a determination of compensation for permanent disability, if any."[1]

¶ 4 The claimant sought review in the circuit court of Cook County. On December 9, 2016, the circuit court issued a 10-page typewritten order in which it set out the procedural history of the case in detail, including the findings of the arbitrator and the Commission, and in which ultimately it confirmed the unanimous decision of the Commission. The claimant now timely appeals.

¶ 5 BACKGROUND

¶ 6 The claimant, Leola Harrell, appeals the decision of the circuit court of Cook County that confirmed the unanimous decision of the Illinois Workers' Compensation Commission (Commission), in favor of the employer, City of Chicago. This case, which involves a work accident that occurred on December 11, 2002, has a long procedural history, most of which is not relevant to this appeal. On February 27, 2015, this court entered an unpublished order in which we recited the procedural history in detail, and in which we ultimately held that the Commission, following a second 19(b) hearing in this

[1] See *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 337 (1980).

case, violated the law-of-the-case doctrine because the Commission relied on a doctor's opinion (that of Dr. Walsh) that was substantially the same as another doctor's opinion that was rejected by the Commission following the first 19(b) hearing. See *Harrell v. Illinois Workers' Compensation Comm'n*, 2015 IL App (1st) 140762WC-U, ¶¶ 72-81. Accordingly, we, *inter alia*, remanded to the Commission with directions "to exclude Dr. Walsh's reports, testimony, and opinions from its reconsideration," and to re-determine "all of the issues presented at the second 19(b) hearing," which included "the claimant's entitlement to further TTD benefits and medical expenses, whether the claimant has reached MMI, and the claimant's entitlement to the vocational assessment ordered by the Commission in the first 19(b) proceeding." *Id*. at ¶ 82.

¶ 7 On December 23, 2015, the Commission entered its unanimous decision and opinion on review on remand. Therein, the Commission noted that it had reviewed, *inter alia*, the treatment records of the claimant's primary care physician, Dr. Catherine Anichini, and that the Commission found "support" to conclude that the claimant had reached maximum medical improvement (MMI) and was not entitled to further temporary total disability (TTD) benefits or further medical benefits. The Commission discussed Dr. Anichini's treatment of the claimant in detail, and noted that on January 17, 2007, Dr. Anichini wrote a letter to the claimant's attorney in which Dr. Anichini expressed the opinion that the claimant had become "permanently disabled," noting that the claimant's "condition had stagnated," and that she had "become more deconditioned." The Commission found "no support for Dr. Anichini's position within her own records,"

ultimately concluding that the January 17, 2007, letter was "an attempt to satisfy the request of a patient, one that was not necessarily supported by the treatment records."

¶ 8 In support of this position, the Commission noted that subsequent letters from Dr. Anichini—authored on July 17, 2007, and September 13, 2007—contradicted the January 17, 2007, letter, because the subsequent letters found the claimant could "resume working if there is light duty available – no heavy lifting or bending." The Commission found "no evidence" in Dr. Anichini's treatment records of the claimant's "condition settling to a degree that left her permanently disabled," and "no evidence in those same records of [the claimant] being so deconditioned to render her permanently disabled." The Commission indicated that it viewed one of Dr. Anichini's treatment notes "with suspicion." The Commission noted that Dr. Cronin had examined the claimant on May 17, 2008, and again on May 22, 2010, and both times had found the claimant unable to work. The Commission noted that there was no evidence in the record that the claimant had been examined by any physician since May 22, 2010.

¶ 9 The Commission concluded that it was "appropriate to find January 7[2], 2007, to [*sic*] the date by which [the claimant] achieved" MMI, because "January 7, 2007,

[2] As the claimant notes in her brief on appeal, this would appear to be a scrivener's error, with the proper date being January 17, 2007, as there is nothing in the record to indicate that anything of significance happened on January 7, 2007, and aside from two instances that cite January 7, 2007, the proper date of January 17, 2007, is consistently cited elsewhere in the Commission's decision.

culminated years of findings by Dr. Anichini of [the claimant's] condition remaining the same and of Dr. Anichini's acknowledgement that [the claimant's] condition has stagnated." The Commission noted our decision in *Freeman United Coal v. Industrial Comm'n*, 318 Ill. App. 3d 170 (2000), and, applying it, found that the claimant not only "was returned to work by her treating physician," but also, "has medical records**implying that [the claimant's] condition has stabilized." The Commission also concluded that the claimant's "ability to work is deemed to be at a light duty capacity with restrictions only against heavy lifting and bending." Based upon the foregoing, the Commission ordered, *inter alia*, that the claimant be paid TTD and medical expenses through January 17, 2007, which signified the end of "the period of temporary total incapacity for work." The Commission also ordered that the case be remanded to the arbitrator "for a determination of compensation for permanent disability, if any."[3]

¶ 10 The claimant sought review in the circuit court of Cook County. On December 9, 2016, the circuit court issued a 10-page typewritten order in which it set out the procedural history of the case in detail, including the findings of the arbitrator and the Commission, and in which ultimately it confirmed the unanimous decision of the Commission. The claimant now timely appeals.

¶ 11 ANALYSIS

¶ 12 On appeal, the claimant contends the Commission erred when it determined that the claimant reached MMI on January 17, 2007, and when it determined that she was not

[3] See *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 337 (1980).

entitled to TTD benefits, or reasonable and necessary medical expenses, after that date. We begin by noting the long-recognized general proposition that "TTD is awarded for the period from the date on which the employee is incapacitated by injury to the date that his condition stabilizes or he has recovered as far as the character of the injury will permit." *Freeman United Coal v. Industrial Comm'n*, 318 Ill. App. 3d 170, 177 (2000). Regardless of whether the claimant may or may not be entitled to permanent disability (PD) benefits under the Act, "once the injured employee's physical condition has stabilized, he is no longer eligible for TTD benefits because the disabling condition has reached a permanent condition." *Id*. As we noted in *Freeman*, one of the dispositive questions with regard to the termination of TTD benefits is whether the claimant's condition has stabilized. *Id*. at 178. Once the condition has stabilized, the claimant has reached MMI, and is no longer eligible for TTD benefits. *Id*; see also, *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (2004).

¶ 13 "The factors to be considered in determining whether a claimant has reached [MMI] include a release to return to work, with restrictions or otherwise, and medical testimony or evidence concerning claimant's injury, the extent thereof, the prognosis, and whether the injury has stabilized." *Freeman*, 318 Ill. App. 3d at 178. The questions of relevance when determining the duration of TTD "are whether the claimant has yet reached [MMI] and, if so, when." *Id*. "The time period of TTD is a question of fact for the Commission, and its decision should not be disturbed unless it is against the manifest weight of the evidence." *Ming Auto Body v. Industrial Comm'n*, 387 Ill. App. 3d 244, 256-257 (2008). "It is well settled that in workers' compensation cases it is the function

of the Commission to decide questions of fact and causation, to judge the credibility of witnesses and to resolve conflicting medical evidence." *Teska v. Industrial Comm'n*, 266 Ill. App. 3d 740, 741 (1994). Findings are against the manifest weight of the evidence only when an opposite conclusion is clearly apparent. *Id*. at 742. A reviewing court considers "whether there is sufficient evidence in the record to support the Commission's finding, not whether [the reviewing court] might have reached the same conclusion." *Metropolitan Water Reclamation Dist. of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013 (2011). Moreover, this court may affirm the Commission on any basis in the record. See, *e.g.*, *Freeman United Coal Mining Co. v. Industrial Comm'n*, 283 Ill. App. 3d 785, 793 (1996). Our power to do so derives from the principle that the question before a reviewing court on appeal is the correctness of the result reached below, rather than the correctness of the reasoning upon which that result was initially reached. See, *e.g.*, *People v. Johnson*, 208 Ill. 2d 118, 128 (2003).

¶ 14 In this case, the claimant first argues that the Commission's MMI determination was against the manifest weight of the evidence because it was "not supported by facts in the record." In particular, the claimant contends that although Dr. Bleier, the physician procured by the employer, found the claimant to be at MMI on September 7, 2007, "in 2008, Dr. Bleier recommended [the claimant] for pain management[,] indicating she was not at MMI." The claimant also contends her position is supported by the opinions of Dr. Konowitz, and takes issue with the overall medical findings of the commission. The claimant further contends the Commission's 2015 decision's "discrediting of Dr.

Anichini is improper in light of the first Commission decision," and urges this court to "find Dr. Anichini credible[,] as did the first Commission." Additionally, the claimant contends that the date on which the Commission found the claimant had reached MMI—January 17, 2007—was "a date when further care was prescribed."

¶ 15 In response, the employer points out that to arrive at its decision, the Commission considered "extensive medical treatment records," the testimony of the claimant, and "assessed the credibility" of both Dr. Anichini and Dr. Cronin. Accordingly, the employer contends, the record in this case, "as a whole," provides adequate support for the Commission's finding that the claimant's "condition had stagnated and therefore she had reached [MMI] as of January 17, 2007." We agree with the employer. Although it is true that the Commission's decision is not a model of clarity, and could have been drafted in a more straightforward manner, a careful reading of the decision demonstrates that the Commission's finding that the claimant reached MMI on January 17, 2007, is not against the manifest weight of the evidence.

¶ 16 Initially, we note that it is true both that: (1) on January 17, 2007, Dr. Anichini wrote a letter to the claimant's attorney in which Dr. Anichini expressed the opinion that the claimant had become "permanently disabled," noting that the claimant's "condition had stagnated," and that she had "become more deconditioned;" and (2) the Commission found "no support for Dr. Anichini's position within her own records," ultimately concluding that the January 17, 2007, letter was "an attempt to satisfy the request of a patient, one that was not necessarily supported by the treatment records." However, we do not believe, as does the claimant, that these facts indicate a self-contradiction on the

part of the Commission. To the contrary, a careful reading of the Commission's decision demonstrates that the Commission found no support in Dr. Anichini's own records only for the claim that the claimant was permanently disabled; the Commission did find support in Dr. Anichini's records for the claim that the claimant's condition had stagnated/stabilized – an entirely different proposition. Thus, the Commission did not "discredit" Dr. Anichini's position. Indeed, as noted above, the Commission remanded the question of permanent disability to the arbitrator, as that question has not yet been decided by the trier of fact. On the point the Commission actually decided—whether the claimant had reached MMI because her condition had stagnated/stabilized—the Commission agreed with Dr. Anichini's position that the claimant's condition had stabilized.

¶ 17 This is further proven by the fact that the Commission noted that subsequent letters from Dr. Anichini—authored on July 17, 2007, and September 13, 2007—contradicted the January 17, 2007, letter, because the subsequent letters found the claimant could "resume working if there is light duty available – no heavy lifting or bending." Thus, the subsequent letters contradicted the January 17, 2007, letter only as to permanent disability – not as to stabilization and MMI. Likewise, the Commission found "no evidence" in Dr. Anichini's treatment records of the claimant's "condition settling to a degree that left her permanently disabled," and "no evidence in those same records of [the claimant] being so deconditioned to render her permanently disabled," findings that again go to permanent disability, not stabilization and MMI. The Commission noted that Dr. Cronin had examined the claimant on May 17, 2008, and again on May 22, 2010, and

both times had found the claimant unable to work – again, issues that go to permanent disability, not to MMI and the question of whether the claimant's condition had stagnated/stabilized.

¶ 18 The Commission concluded that it was "appropriate to find January 7[4], 2007, to [*sic*] the date by which [the claimant] achieved" MMI, because "January 7, 2007, culminated years of findings by Dr. Anichini of [the claimant's] condition remaining the same and of Dr. Anichini's acknowledgement that [the claimant's] condition has stagnated." The Commission noted our decision in *Freeman United Coal v. Industrial Comm'n*, 318 Ill. App. 3d 170 (2000), and, applying it, found that the claimant not only "was returned to work by her treating physician," but also, "has medical records**implying that [the claimant's] condition has stabilized." The Commission also concluded that the claimant's "ability to work is deemed to be at a light duty capacity with restrictions only against heavy lifting and bending." This conclusion of the Commission was not against the manifest weight of the evidence. Contrary to the claimant's contentions, this conclusion was supported by the facts in the record, principal among them, the records of the claimant's treating physician, Dr. Anichini, which show that over a period of several years, Dr. Anichini repeatedly released the claimant to work in a light-duty capacity.

[4] As noted above, the proper date is January 17, 2007, as consistently used elsewhere in the Commission's decision.

¶ 19 Moreover, we find no merit to the claimant's argument that although Dr. Bleier, the physician procured by the employer, found the claimant to be at MMI on September 7, 2007, "in 2008, Dr. Bleier recommended [the claimant] for pain management[,] indicating she was not at MMI." First, as explained above, it was the province of the Commission to evaluate conflicting medical evidence. Second, an employee could both reach MMI and require continued pain management. See, *e.g.*, *Elmhurst Memorial Hospital v. Industrial Comm'n*, 323 Ill. App. 3d 758, 765 (2001) (Commission did not err in finding compensable—even after the employee reached MMI—medical treatment that helped alleviate pain from a chronic condition that was causally related to her work accident and injury). The same is true of the claimant's contentions with regard to the opinions of Dr. Konowitz, who was a pain medicine specialist, and with regard to the fact that the date on which the Commission found the claimant had reached MMI—January 17, 2007—was "a date when further care was prescribed." As the Commission pointed out, MMI does not necessarily mean full recovery from an injury – it means the point at which the employee's condition stabilizes or the employee has recovered as far as the character of the injury will permit. See, *e.g.*, *Freeman United Coal v. Industrial Comm'n*, 318 Ill. App. 3d 170, 177 (2000). As demonstrated herein, the Commission properly applied the *Freeman* factors to this case. See *Freeman United Coal*, 318 Ill. App. 3d at 178 ("The factors to be considered in determining whether a claimant has reached [MMI] include a release to return to work, with restrictions or otherwise, and medical testimony or evidence concerning claimant's injury, the extent thereof, the prognosis, and whether

the injury has stabilized"). Therefore, the Commission's decision is not against the manifest weight of the evidence.

¶ 20 The claimant also argues that the Commission erred when it ruled that she was not entitled to TTD benefits after January 17, 2007. However, as explained above, once a claimant reaches MMI, the claimant is no longer eligible for TTD benefits. See, *e.g.*, *Nascote Industries v. Industrial Comm'n*, 353 Ill. App. 3d 1067, 1072 (2004). Accordingly, because the Commission did not err when it determined that the claimant had reached MMI on January 17, 2007, it also did not err when it determined that the claimant was not entitled to TTD benefits beyond that date.

¶ 21 The employer contends that the Commission correctly found that the claimant failed to prove that her bilateral carpal tunnel syndrome arose out of and in the course of her employment and failed to prove that this condition was causally related to her December 11, 2002, work accident. However, the claimant has not raised this point on appeal and, therefore, the Commission's decision with respect to the claimant's carpal tunnel syndrome is not before us on appeal.

¶ 22 Finally, the claimant argues that the Commission denied her medical expenses after January 17, 2007, based solely on the improper conclusion that she was not entitled to medical expenses after she reached MMI. The employer argues that the Commission properly denied medical expenses after January 17, 2007, because the claimant's medical expenses after January 17, 2007, were related to the carpal tunnel syndrome which, the Commission found, was unrelated to the workplace accident. We agree with the claimant that the basis for the Commission's denial of medical expenses after January 17, 2017,

was the erroneous conclusion that she was not entitled to medical expenses after reaching MMI. Therefore, we must remand to the Commission for further proceedings on the compensability of the claimant's medical expenses incurred after January 17, 2007.

¶ 23 The claimant correctly notes that "medical expense payment is not determined by MMI." Instead, "[u]nder the provisions of section 8(a) of the Act, an employer is required to pay for all necessary medical, surgical, and hospital services that are reasonably required to cure or relieve the effects of an accidental injury sustained by an employee and arising out of and in the course of her employment." *Elmhurst Memorial Hospital v. Industrial Comm'n*, 323 Ill. App. 3d 758, 764 (2001) (citing 820 ILCS 305/8(a) (West 1998)). The employer remains liable for expenses under section 8(a) "so long as the medical services are required to relieve the injured employee from the effects of the injury." *Id*. Nevertheless, "the employee is only entitled to recover for those medical expenses which are reasonable and causally related to her industrial accident." *Id*. at 764-765. In *Elmhurst*, we held that the Commission did not err in finding compensable medical treatments incurred after the employee reached MMI where the treatments helped alleviate pain from a chronic condition that was causally related to the employee's work accident and injury. *Id.* at 765.

¶ 24 In the present case, the claimant suffered a workplace injury that has resulted in ongoing pain symptoms. The evidence supports the Commission's finding that the claimant reached MMI on January 17, 2007, because her condition had stagnated/stabilized. The evidence did not establish, however, that the claimant no longer suffered any pain symptoms related to the accident after January 17, 2007. Nonetheless,

having found that the claimant reached MMI on January 17, 2007, the Commission concluded that the claimant was "not entitled to further *** medical benefits" after that date. This conclusion is incorrect to the extent that the claimant continued to receive medical treatments after January 17, 2007, that were causally related to her work accident.

¶ 25 "[W]hether medical treatment is causally related to a compensable injury is one of fact to be determined by the Commission," subject to the manifest weight of the evidence standard of review. *Elmhurst Memorial Hospital*, 323 Ill. App. 3d at 764-65. On appeal, the employer argues that the treatments that the claimant received after January 17, 2007, were "the subsequent curative and relief treatment *** her unrelated bilateral carpal tunnel condition." The claimant, however, argues that her medical expenses incurred after January 17, 2007, were necessary to help alleviate pain symptoms from the workplace accident. Because of the erroneous basis for its ruling, the Commission did not make any factual determinations concerning whether any of the claimant's medical expenses after January 17, 2007, were causally related to the workplace accident. Accordingly, there are no factual findings for us to evaluate under the manifest weight of the evidence standard on this issue. We must reverse the circuit court's judgment with regard to reasonable and necessary medical expenses, vacate the Commission's decision with regard to reasonable and necessary medical expenses, and remand for further proceedings for the Commission to determine whether the claimant incurred any reasonable and necessary medical expenses after January 17, 2007, that are causally related to her compensable workplace accident.

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, we affirm in part and reverse in part the judgment of the circuit court, which confirmed the Commission's decision, vacate the Commission's decision with regard to reasonable and necessary medical expenses, and remand for further proceedings to determine both: (1) compensation for permanent disability, if any and (2) whether the claimant incurred any reasonable and necessary medical expenses after January 17, 2007.