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2018 IL App (2nd) 180135WC-U

FILED: November 29, 2018

NO. 2-18-0135WC

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

CECILIA OLIVO,)	Appeal from
)	Circuit Court of
Appellant,)	Kane County
)	No. 17MR830
v.)	
THE ILLINOIS WORKERS' COMPENSATION)	
COMMISSION <i>et al.</i> (Gonnella Baking,)	Honorable
Appellee).)	David R. Akemann,
)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Hudson, and Barberis
concurred in the judgment.

ORDER

¶ 1 *Held:* The Commission's findings that claimant failed to prove that she sustained an accident that arose out of and in the course of her employment, and that any current condition of ill-being was not causally related to any work-related accident were not against the manifest weight of the evidence. The Commission did not commit error in denying claimant compensation under the Act.

¶ 2 On April 1, 2015, claimant, Cecilia Olivo, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2012)). She sought benefits from her employer, Gonnella Baking (Gonnella), claiming she suffered "bone and soft tissue" injuries on February 27, 2015, in a work-related accident when she fell

from the bottom step on her way to the restroom. Following a hearing, the arbitrator found claimant failed to prove that she sustained any accidental injury and denied her benefits under the Act. On review, the Illinois Workers' Compensation Commission (Commission) affirmed and adopted the arbitrator's decision. On judicial review, the Kane County circuit court affirmed the Commission's decision, concluding it was not against the manifest weight of the evidence. Claimant appeals, arguing the Commission's decision that she failed to prove she sustained a compensable work-related accident was against the manifest weight of the evidence. We affirm.

¶ 3

I. BACKGROUND

¶ 4

On April 13, 2016, the arbitration hearing was conducted. Claimant introduced the testimony of two Gonnella managers. First, Elizabeth Ann Marcucci, the corporate safety director, testified she retrieved video surveillance of the area and found the recording of claimant's fall. The video was admitted into evidence. Marcucci said she watched the video in slow motion and described the incident as follows. In this particular area of the business, there was a staircase that required employees to descend two steps. These steps were made of a metal diamond-plated mesh material. The surface of each stair tread was flat. The video showed claimant walk down the two steps and then fall forward on her knees and hands onto the concrete floor. She got up and moved toward the nearby wall. She bent forward at the waist toward the floor. Marcucci said it appeared claimant was tying her shoe. Claimant then stood up and walked across the room.

¶ 5

Randy Butera, a production manager, testified that he met claimant at the hospital on the day of her fall and drove her back to Gonnella. Apparently, another manager had given her a ride to the hospital. Butera testified claimant was wearing gym shoes with laces. When Butera arrived back at Gonnella, he immediately inspected the area and took photographs of the

stairs. He saw no defect in the area.

¶ 6 Claimant testified with the assistance of a Spanish-speaking interpreter. Although she said she understood English, she felt more comfortable with assistance. She had worked at Gonnella since November 2012. She explained that on the day of the incident, February 27, 2015, her boot got stuck on the metal “peaks” of the last step. When she stepped onto the concrete with her left foot, her right foot was stuck on the last step causing her to fall onto her left knee. She completed an incident report and complained of knee, hand, and lower back pain. In support of her claim, she presented her written medical records, which were admitted into evidence.

¶ 7 The medical records indicated claimant went to Provena Mercy Hospital the day of the incident complaining of lower back and left groin pain. X-ray examinations of her pelvis, sacrum, and coccyx were negative. The radiologist noted “mild degenerative changes at the sacroiliac joints.”

¶ 8 On March 2, 2015, Dr. Charles G. Woodward, an internal medicine physician, specializing in occupational medicine, examined claimant at Gonnella’s request. Dr. Woodward diagnosed her with a low back strain and bilateral inguinal (groin) strain. She was allowed to return to work with a restriction of “sitting work only.” The same day, claimant visited her own physician, Dr. Abdul Qadir, who diagnosed her with a lumbar sprain.

¶ 9 Claimant returned to Dr. Woodward on March 9, 2015, stating she was unable to sit or walk because of discomfort in her mid to lower back. The doctor noted claimant was “walking down the hall without difficulty. She [was] able to go from the sitting to standing position without difficulty.” The doctor suggested certain stretching exercises and allowed her to return to work with a 15-pound lifting restriction.

¶ 10 Claimant continued seeing Drs. Woodward and Qadir as recommended for back pain. Dr. Woodward noted, from a March 16, 2015, visit, that claimant complained her pain was worse when she bends or twists and it radiates to both knees when she was at work. His examination revealed she refused to flex her back due to the pain but was “able to easily get up on the exam table.” On March 20, 2015, he noted she was “able to ambulate well on her way in to the clinic. She mount[ed] the examination table with ease.” However, she reported continued pain. Dr. Woodward recommended physical therapy.

¶ 11 On March 24, 2015, claimant went to the emergency room for a third time since the incident with complaints of continued pain. A CT scan demonstrated some bulging discs in her lower back.

¶ 12 Although Gonnella had accommodated claimant’s work restrictions, she had been disciplined on more than one occasion for leaving work due to reported pain without notifying her supervisors. Claimant said Gonnella “let [her] go” on March 26, 2015, but they did not terminate her employment. Gonnella’s insurance carrier refused to pay claimant any benefits after its investigation of the incident.

¶ 13 On April 9, 2015, claimant visited Dr. Mark Lorenz, an orthopedic specialist, for a second opinion. He ordered an MRI of the lumbar spine and recommended physical therapy. He noted she had “some hip discomfort and some pain into the groin with internal and external rotation bilaterally.”

¶ 14 Beginning on April 16, 2015, claimant participated in physical therapy at ATI Physical Therapy. She reported pain in the middle of her lower back. She reported limitations on carrying, cleaning, sweeping, lifting from the floor, pulling or pushing, sleeping more than six hours, squatting, sustained standing, and walking. By June 8, 2015, she reportedly had no

improvement in her pain. The therapist noted claimant had “made objective improvements with joint mobility, ROM, soft tissue mobility however continues to report limitations with [activities of daily living] due to pain.”

¶ 15 Dr. Lorenz referred claimant to Dr. Benjamin Domb because he felt claimant’s complaints did not involve the lower back so as to warrant further treatment. Dr. Domb was a board certified orthopedic surgeon specializing in arthroscopic surgery with a special interest in hip injuries. Claimant introduced Dr. Domb’s November 10, 2015, evidence deposition into evidence during the hearing. Dr. Domb indicated he saw claimant only once in June 2015 and diagnosed her with bilateral hip pain with labral tears caused by a work-related injury. He had reviewed the MRI arthrograms of claimant’s right and left hips performed on June 22, 2015. Dr. Domb stated that it was his opinion to a reasonable degree of medical certainty that the mechanism of claimant’s accident “might or could result in the damage” found in both hips. According to Dr. Domb, claimant had a labral tear in both hips. He explained the labrum is a ring of fibrocartilage around the edge of the socket of the hip joint. Such a tear can result from “any abnormal force on the hip joint, which may include forceful muscle contraction, an axial load, direct impact or a rotational or torsional force.” The doctor also noted the presence of high-grade, left-sided chondromalacia (deterioration of knee cartilage), which he believed was also related to the fall. On cross-examination, he admitted he was unable to date the age of the labral tears from the arthrogram studies.

¶ 16 Gonnella offered an opposing expert opinion through the evidence depositions of Dr. Theodore Suchy. The doctor’s first deposition was conducted on July 7, 2015, after his physical independent medical examination of claimant on March 18, 2015, pursuant to section 12 of the Act. Dr. Suchy, a board certified orthopedic surgeon, testified he reviewed the records

from Dr. Qadir, Presence Medical Center, ATI Physical Therapy, and Dr. Lorenz. Based upon the information available to him, Dr. Suchy noted from Dr. Qadir's records that claimant had complained of lower abdominal pain in both the right and left quadrants and suprapubic pain in January 2015, prior to the fall. However, he noted claimant denied any preexisting complaints to the groin or pubic region during her March 2015 examination. At the time of her physical examination, claimant showed some tenderness across the lower paralumbar region and tenderness in the right and left inguinal ligaments but a full range of motion in the extremities. Dr. Suchy, referring to Dr. Woodward's note about claimant's ability to walk, sit and stand up without difficulty, indicated that claimant's complaints do not correlate from the doctor's observations. In other words, Dr. Woodward noted no objective physical findings that correlate with claimant's subjective complaints.

¶ 17 Dr. Suchy indicated he reviewed claimant's March 24, 2015, CT scans of her lumbar region performed after his physical examination. The radiologist found no acute osseous disease, diffuse bulging at L5-S1, L4-L5, no significant neuroforaminal narrowing, and chronic developmental versus old traumatic appearance of the inferior articular process of L5. In other words, any condition observed was more chronic than acute. Bulging disks in the lumbar spine are many times asymptomatic and have no significant pathological disease process. In Dr. Suchy's opinion, to a reasonable degree of medical and orthopedic surgical certainty, the degenerative findings from the CT scan predated claimant's fall one month prior.

¶ 18 In his physical examination of claimant, Dr. Suchy noted claimant "walked with a somewhat hesitant and apparently painful gait." During his straight leg raise, claimant complained of significant pain. To verify her pain, he asked her to sit in an upright position. With both examinations, the hips would be at 90 degrees. She should have complained of pain while

sitting upright but she did not. A FABER (hip motion) test and neurological exam were normal.

¶ 19 At the conclusion of the examination, Dr. Suchy watched claimant walk across the parking lot. He noticed her “gait was substantially different than from what [he] saw her gait to be when [he] examined her.” He said she was able to walk to her car without difficulty. In Dr. Suchy’s medical and orthopedic professional opinion, claimant’s “subjective complaints outweighed her objective findings.” It was possible that claimant suffered a lumbar strain during the fall, but by the time of his examination, there was no indication of “any significant lumbar strain or neurological deficits.” In his opinion, claimant was at maximum medical improvement and could perform regular activity without restrictions.

¶ 20 Dr. Suchy also testified that he reviewed the MRI film from April 16, 2015, of the lumbar spine. The film showed claimant had several levels of disk bulging, but no evidence of herniation and only minimal nerve root compression. She had some mild degenerative changes noted. The radiologist noted a left-sided annular tear at L5-S1, which has no pathological symptomatology. In Dr. Suchy’s opinion, to a reasonable degree of medical and orthopedic surgical certainty, claimant’s fall in February 2015 caused no significant pathological process within her lumbar spine as noted on the April 2015 MRI. According to Dr. Suchy’s written report from his physical examination, his impression of claimant was as follows: “Low back and pelvic pain with subjective complaints greatly outweighing objective findings.”

¶ 21 Dr. Suchy’s subsequent deposition was taken on January 19, 2016, and was also admitted into evidence. After he had submitted his written report, he was asked to review additional medical records from Dr. Lorenz and the reports from the MRI arthrograms of claimant’s left and right hips. He also viewed surveillance videos of claimant from Gonnella’s private investigator. Dr. Suchy testified that his review of the additional information did not

change his opinion that claimant had “a significant amount of subjective complaints unsupported by objective findings.”

¶ 22 Dr. Suchy’s review of the arthrograms did not differ significantly from the radiologist’s impression though he did notice a small bony protuberance that grows with age. It was not caused by the fall. Otherwise, he agreed with the radiologist that there was no evidence of any significant labral tear. The cause of the arthrogram findings were degenerative, not traumatic, in nature. He said “in no way did that mechanism of injury cause any exacerbation or acceleration or aggravation of the findings that [he] saw on MRI arthrogram of either hip.”

¶ 23 Dr. Suchy acknowledged reviewing Dr. Lorenz’s notes regarding claimant’s reported complaints of trouble walking and sitting without pain. In June 2015, claimant advised she had to walk with a cane. Dr. Suchy also acknowledged reviewing the video surveillance of claimant driving a vehicle, getting in and out of a vehicle, bending, squatting, and lifting items seemingly without difficulty. The surveillance recorded claimant on six different dates between March 18, 2015, and July 22, 2015. In his opinion, claimant “showed no obvious observable difficulty in the activities reviewed.” Her activity was not consistent with a symptomatic labral condition. He stated:

“Based on a reasonable degree of medical and orthopedic surgical certainty, if, in fact, she had significant labral pathology in either hip, the ability to get in and out of a car, flexing her hip at 90 degrees, especially an SUV, which is a little bit higher, and showing no evidence of difficulty doing that, ambulating through a parking lot without difficulty would, in my opinion, show that there’s no significant labral pathology within either hip.”

¶ 24 Dr. Suchy opined, based on his review of claimant’s records, the video

surveillance, and his own examination, “there’s no causal relationship between any pathology within her hips and the alleged injury of February 27, 2015.” In his report, Dr. Suchy stated “claimant had significant symptom magnification.”

¶ 25 On cross-examination, Dr. Suchy explained that the radiologist’s report from the MRI arthrograms did not indicate any labral tears. The radiologist had noted “suspected labral tears,” which Dr. Suchy explained meant there was no obvious labral tears. He said if the radiologist saw a labral tear, he would not have used the word “suspect.” Dr. Suchy explained that if there was any significant pathology within the hip, such as labral tears, claimant would have an abnormal gait which would be persistent throughout her examinations.

¶ 26 On July 7, 2016, the arbitrator issued her decision in the matter. She denied claimant’s claim for benefits on the basis that claimant failed “to prove accidental injury arising in and out of the course of her employment on February 27, 2015. Wherefore, [claimant]’s claim for compensation is denied.” The arbitrator further found claimant “failed to prove a causal connection between any current condition of ill-being and the incident of February 27, 2015.” In particular, the arbitrator found claimant’s testimony was not credible and noted the discrepancies between claimant’s actions and subjective complaints as compared to the objective medical records and video surveillance. The arbitrator “would therefore adopt the opinions of Dr. Suchy that petitioner, at best, had a lumbar strain with no objective evidence of its presence and that no causality would exist relative to petitioner’s hip condition or the findings noted on either hip arthrogram.” All claimed benefits were denied.

¶ 27 On June 15, 2017, the Commission affirmed and adopted the arbitrator’s decision without further comment. On January 24, 2018, the circuit court of Kane County confirmed the Commission.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 On appeal, claimant argues the Commission erred in finding she had failed to prove that she sustained an accident entitling her to benefits under the Act. She maintains her fall on February 27, 2015, constituted an accident arising out of and in the course of her employment and that her injuries from that fall are compensable. She claims the Commission's denial of benefits was against the manifest weight of the evidence. We disagree.

¶ 31 "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that [s]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). It is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting evidence. *Sleeter v. Industrial Comm'n*, 346 Ill. App. 3d 781, 784 (2004). The Commission's determination on a question of fact will not be disturbed on review unless it is against the manifest weight of the evidence. *Id.* For a finding to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 539 (2007).

¶ 32 We first address claimant's argument that the arbitrator improperly considered "out-of-court observations to attack [claimant]'s credibility." Claimant refers to the arbitrator's finding that claimant had appeared at the previously scheduled hearing in November 2015 utilizing a cane. Claimant argued the arbitrator relied on this out-of-court observation to make a credibility determination, and as such, had denied claimant her right to due process. However, claimant's argument is without merit. The record specifically includes a statement made by claimant on cross-examination that she appeared before the Commission at a previously

scheduled hearing on November 24, 2015, using a cane. This statement was not an “extra-judicial investigation” as characterized by claimant. Rather, claimant’s statement was part of the record of the proceeding properly before the arbitrator and the Commission. See 820 ILCS 305/1.1(e) (West 2014) (“Decisions of an arbitrator or a Commissioner shall be based exclusively on evidence in the record of the proceeding and material that has been officially noticed. Any findings of fact made by the arbitrator based on inquiries, investigations, examinations, or inspections undertaken by the arbitrator shall be entered into the record of the proceeding.”).

¶ 33 Here, the Commission considered the testimony not only of claimant and her treating physician, but also the seemingly contradictory evidence of other physicians, her medical records, and video evidence, and ultimately decided the merits in favor of Gonnella. See *Branch v. Industrial Comm’n*, 95 Ill. 2d 268, 270 (1983) (it is the Commission’s duty to judge credibility). The appropriate test for the purpose of this court’s review is whether the record contains sufficient evidence to support the Commission’s decision, not whether this court might have reached the same conclusion. *Freeman United Coal Mining Co. v. Industrial Comm’n*, 317 Ill. App. 3d 497, 504 (2000). In other words, this court “cannot reject or disregard permissible inferences drawn by the Commission simply because different or conflicting inferences might also reasonably be drawn from the same facts, nor can we substitute our judgment for that of the Commission on such matters unless its findings are contrary to the manifest weight of the evidence.” *Zion-Benton High School District 126 v. Industrial Comm’n*, 242 Ill. App. 3d 109, 113 (1993).

¶ 34 In this case, the Commission had before it contradictory medical testimony regarding (1) whether claimant’s claimed injuries were supported by the medical and other

documented evidence, and (2) whether there was a causal relationship between these claimed injuries and her fall on February 27, 2015. This court reviewed the record in its entirety, including the video of the fall and the surveillance videos produced by Gonnella, along with the medical documentation and evidentiary depositions.

¶ 35 The record indeed established that claimant's subjective complaints of pain were inconsistent with the more trustworthy objective medical and surveillance evidence. The Commission adopted in full the arbitrator's decision, and the arbitrator specifically found that claimant lacked credibility. While claimant complained of suffering debilitating injuries from the fall, the evidence suggested otherwise. The video of claimant's fall was not definitive due to the camera angle, but it did support a theory that claimant had likely exaggerated her injuries. She immediately stood up, bent over from her waist toward her feet, and then walked away at a normal pace and gait. Further, on or around the same days that she had complained of pain in her lower back, hips, and groin, which had reportedly prohibited her from performing normal daily activities, she was seen on the surveillance video performing acts that discredited her claims. She appeared to walk, get in and out of her vehicle, and load items in her car without trouble and at a normal pace. Further, her medical records suggested her complaints were not consistent with the providers' various findings. For example, she complained of pain while walking, but yet she had no trouble mounting the examination table and thereafter performed well upon evaluation. These examples support the Commission's finding as to claimant's lack of credibility.

¶ 36 In contrast, claimant insists her subjective complaints were valid and supported by the medical records and the testimony of Dr. Domb. Essentially, claimant's argument on appeal is that the Commission improperly weighed certain medical evidence against the conflicting medical evidence, improperly giving more weight to Dr. Suchy's testimony.

¶ 37 As indicated above, an appellate court's review of the Commission's decision does not involve a determination of which medical expert is more worthy of belief, but only involves the determination of whether or not there is proper medical evidence in the record sufficient to support the decision. *Crane Co. v. Industrial Comm'n*, 32 Ill. 2d 348, 352-53 (1965). Additionally, judicial deference is given to the Commission in cases where the medical testimony is conflicting. *County of Cook v. Industrial Comm'n*, 57 Ill.2d 24, 28 (1974). As such, contrary to claimant's argument, we do not find that an opposite conclusion is clearly apparent from the record. See *City of Springfield v. Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315 (2009). The Commission's determination that claimant failed to prove compensable accidental injuries arising out of and in the course of her employment from her fall on February 27, 2015, is not against the manifest weight of the evidence.

¶ 38 III. CONCLUSION

¶ 39 For the reasons stated, we affirm the judgment of the circuit court of Kane County confirming the Commission's decision.

¶ 40 Affirmed.