2018 IL App (3d) 170797WC-U

FILED November 30, 2018

NO. 3-17-0797WC

IN THE APPELLATE COURT

OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

LLOYD ROBERTS, Appellant, v. THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (USF Holland), Appellee.	))))))))	Appeal from Circuit Court of Rock Island County No. 16MR65 Honorable Kathleen Ellen Mesich, Judge Presiding.

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

ORDER

¶ 1 *Held*: The Commission's finding that claimant failed to prove that his condition of ill-being was causally connected to his workplace accident was not against the manifest weight of the evidence and it committed no error in denying claimant compensation under the Act.

¶ 2 On July 9, 2013, claimant, Lloyd Roberts, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2012)). He sought benefits from his employer, USF Holland, claiming he injured his wrist on May 4, 2012, in a work-related accident when he attempted to close a padlock on his tractor trailer door.

Following a hearing, the arbitrator found claimant proved that the accidental injury he sustained arose out of his employment, but his present condition of ill-being was not causally related to the accident. The arbitrator denied him benefits under the Act. On review, the Illinois Workers' Compensation Commission (Commission) affirmed and adopted the arbitrator's decision. On judicial review, the Rock Island County circuit court affirmed the Commission's decision, concluding it was not against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On November 13, 2014, the arbitration hearing was conducted with claimant as the only testifying witness. In support of his claim, he also presented his written medical records, which were admitted into evidence. The employer offered an opposing expert opinion through the evidence deposition of Dr. Mark Cohen, a board certified orthopedic surgeon who specializes in disorders of the hand, wrist, forearm, and elbow. The following is a summary of the evidence presented.

¶ 5 Claimant testified he had worked for the employer as a truck driver since 2003. He had not previously suffered any injury to his right hand or wrist. On May 4, 2012, he arrived at work to begin his shift at approximately 6 a.m. After his truck was loaded, he attempted to lock the padlock on the trailer door. He held the approximate six-inch lock in his left hand and bumped the lock with the heel of his right hand. He struck the lock three times, each blow with more force, until he was successfully able to close the padlock. After the third strike, he said he noticed his hand and wrist were "stinging, hurting, pain." He said "[i]t started hurting immediately." At the moment of impact, his wrist "[b]ent backwards" approximately "45 degrees."

¶ 6 On May 21, 2012, approximately two weeks after the accident, the employer

suggested to claimant he be evaluated at Concentra Medical Center (Concentra). He was evaluated by Dr. Lester Kelty, a family practice specialist. Claimant complained of pain and numbness in third and fourth digits on his right hand. His x-rays showed no fractures, so he was diagnosed with a contusion. After no relief in his pain, claimant returned to Concentra on June 13, 2012, and was evaluated by Dr. Patricia Dunbar, another family practice specialist. She ordered an MRI, which revealed tears in the triangular fibrocartilage complex (TFCC) and the scapholunate ligament. On June 27, 2012, Dr. Dunbar indicated claimant's diagnosis of two internal wrist tears was "compatible with the history of his injury[.]"

¶ 7 On July 5, 2012, claimant was evaluated by Dr. James Lyles, an orthopedist at ORA Orthopedics. Claimant was initially treated with an injection into the TFCC and given work restrictions. With no reported improvement, on August 15, 2012, Dr. Lyles performed arthroscopic surgery. On September 12, 2012, claimant underwent a second surgery when Dr. Lyles performed a right ulnar osteotomy and shortening. Claimant participated in physical therapy and follow-up appointments with Dr. Lyles. On November 29, 2012, Dr. Lyles diagnosed claimant with an early onset of reflex sympathetic dystrophy (RSD).

¶ 8 On July 1, 2013, in Dr. Lyles's opinion, claimant had reached maximum medical improvement and was "unable to return to work." Claimant still had pain and had difficulty performing daily activities. According to Dr. Lyles, claimant's condition was "consistent with [RSD] following scapholunate ligament reconstruction [and] ulnar abutment osteotomy following a trauma."

¶ 9 At the employer's request, on December 9, 2013, claimant was examined pursuant to section 12 of the Act by Dr. Cohen. According to Dr. Cohen, claimant was predisposed to suffering a chronic or degenerative tear of the TFCC because he was born with

his ulna bone longer than his radius bone. Nevertheless, in Dr. Cohen's opinion, striking a padlock with the fleshy heel of his hand (the hypothenar region) would not cause the hyperextension of the wrist as is generally required to cause a tear in the TFCC. In fact, it was difficult for Dr. Cohen to imagine how attempting to lock the padlock "with a sort of uppercut motion" would cause the tear. He said "[a]cute tears typically occur from a fall on the outstretched hand. Chronic tears can occur otherwise, meaning there's actually two mechanisms by which the TFCC can get injured." Acute tears generally result from the hyperextension of the wrist. On the other hand, chronic tears typically occur in people who are "predisposed to chronic tears, people who are born with one bone of their forearm longer than the other; the ulna bone being longer than the radius."

¶ 10 Dr. Cohen said he understood the mechanism claimant was using to close the lock (striking the lock with the heel of his hand in an uppercut motion), but "[t]hat is not the mechanism by which someone has a tear of which we're discussing." He said he had "never heard of that mechanism causing tears of either the TFCC or the scapholunate ligament. *** It just doesn't fit anything that I have ever been taught or seen practicing in hand and wrist surgery for the past 20 years." This was so even with claimant's degenerative condition. He agreed that "[a]nything is possible," but he does "not believe it is reasonable, and [he does] not believe it is logical."

¶ 11 Dr. Cohen stated:

> "When you use your hand as a hammer, you stabilize your wrist and you strike another object, such as a lock. Your wrist and hand are working together, and you are, before contact, firing the muscles to keep your wrist in a stable position. Striking an object with your palm does not typically lead to extension of

the wrist. It certainly doesn't lead to hyperextension of the wrist with the type of force that is typically needed to tear these ligaments."

¶ 12 The doctor indicated it would be expected for claimant to suffer numbness in his two rightmost fingers after suffering a hand contusion to the ulnar nerve. When people use their hand as a hammer, they typically present with "hypothenar hammer syndrome," tingling in their ring and small fingers from using their hand as a hammer. Thus, claimant's complaint of numbness and tingling in those fingers was, in Dr. Cohen's opinion, "very consistent with his history and the original diagnosis of a hand contusion." Dr. Cohen noted claimant complained of pain in his palm and pain with resisted finger movement. He noted claimant "did at one point have pain with wrist extension[, b]ut much of his pain was involving his hand, not his wrist, prior to the surgeries. In fact, on July 5, 2012, Dr. Lyles documented that claimant had a negative Watson test bilaterally. He said: "The Watson is a test used to determine symptomatic scapholunate instability." Nothing in his Concentra notes from May through July 2012 indicated claimant was having TFCC pain or that there was laxity in the scapholunate ligament.

¶ 13 Dr. Cohen stated that over one third of individuals claimant's age have tears in ligaments within the wrist, including the TFCC and the scapholunate ligament. However, the MRI was incapable of identifying whether the tears were degenerative/chronic or acute/traumatic. He said: "My opinions are that [claimant] was predisposed to a degenerative tear in his TFCC. My other opinion is that striking a lock with his palm in May of 2012, in my opinion, would not have led to pathology within his wrist specifically." It was possible for degenerative TFCC tears to be asymptomatic in individuals, like claimant, who are ulnar positive. Further, it was possible for a traumatic injury to cause a previously asymptomatic degenerative TFCC tear to become symptomatic and require surgery. However, such trauma

would likely involve a fall on an outstretched hand where the wrist becomes hyperextended. Dr. Cohen testified his opinions were all based upon a reasonable degree of medical and surgical certainty.

¶ 14 In his written report, which was admitted as an exhibit to his deposition, Dr. Cohen stated:

> "Causation in this case is somewhat difficult from this retrospective perspective. I must state that it is somewhat difficult for me to understand how a direct trauma to an extended palm could lead to both irreversible, ulnocarpal impaction and a scapholunate ligament tear. However, my opinions in this case are limited, based on the inability to review previous medical records and imaging studies."

According to Dr. Cohen, claimant's diagnosis "appears to be persistent right wrist pain following two previous surgical procedures." In his opinion, claimant was at maximum medical improvement. In a follow-up letter to the employer's counsel dated May 23, 2014, also admitted as an exhibit to his deposition, Dr. Cohen stated he had since reviewed "an abundant amount of [claimant's] previous medical records." After his review, he stated that he

> "continue[s] to have a difficult time understanding how wrist ligament pathology could occur from a direct blow to the ulnar base of the hand. In fact, the initial notes from May 21, 2012, do not comment at all with respect to [claimant's] wrist. I do understand that a magnetic resonance scan from June 2012 showed ligament pathology. However, this is seen in almost a third of patients over the age of 30. I am again not convinced that the ligament findings on the magnetic resonance scan were secondary to the May 2012 trauma. Other than that, the

complete medical record review in no way changes my opinions in this case."

¶ 15 After the hearing, the arbitrator determined that claimant was injured in a work-related accident, but that accident was not the cause of claimant's current condition of ill-being. Finding no causal connection between claimant's current condition and the May 4, 2012, work-related accident, the arbitrator determined claimant was not entitled to benefits. The Commission and the circuit court agreed. Claimant appeals, arguing the Commission erred in finding he failed to prove causation. He claims Dr. Cohen misinterpreted the mechanism of claimant's injury and accordingly, the Commission misinterpreted the evidence.

¶ 16 This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 Under the Act, compensable injuries must arise out of and in the course of employment. 820 ILCS 305/1(d) (West 2012); *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). Claimant has the burden of showing the injury was work related by a preponderance of the evidence. 820 ILCS 305/1(d) (West 2012). "The 'arising out of' component is primarily concerned with causal connection" and is satisfied if the claimant shows "the injury had its origin in some risk connected 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.

¶ 19 Here, the Commission found that claimant's act of striking the padlock with the palm of his hand to force it closed was an accidental injury which arose out of and in the course of his employment. Neither party challenges that finding. Instead, claimant argues that his work-related accident was the cause of his current condition, debilitating injuries to his wrist after undergoing two surgeries to repair tears to the TFCC and the scapholunate ligament. He contends the manifest weight of the evidence supports his position.

¶ 20 The parties agree on the applicable standard of review. Whether claimant's ill-being is attributable solely to a degenerative process of a preexisting condition or to an aggravation or acceleration of a preexisting condition because of an accident is a factual determination to be decided by the Commission. *Sisbro*, 207 Ill. 2d at 205-06. "[A] reviewing court must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn, nor should a court substitute its judgment for that of the Commission unless the Commission's findings are against the manifest weight of the evidence." *Sisbro*, 207 Ill. 2d at 206. " '[T]o the extent that the medical testimony might be construed as conflicting, it is well established that resolution of such conflicts falls within the province of the Commission, and its findings will not be reversed unless contrary to the manifest weight of the evidence.' " *Sisbro*, 207 Ill. 2d at 206 (quoting *Caterpillar Tractor Co. v. Industrial Comm'n*, 92 Ill. 2d 30, 37 (1982).

¶ 21 "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent." *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 312-13 (2009). On review, "[t]he appropriate test is whether there is sufficient evidence in the record to support the Commission's finding, not whether this court might have reached the same conclusion." *Metropolitan Water*, 407 Ill. App. 3d at 1013.

¶ 22 In his brief, to support his position, claimant seems to misconstrue the evidence, takes certain opinions out of context from which they were given, and asserts that certain evidence weighs more heavily than other evidence without justification. The totality of the evidence suggests the following. After first seeking medical treatment for pain and numbness in his hand and fingers, claimant was diagnosed with a contusion, as he had a full range of motion and good grip strength. After claimant's MRI revealed the tears, Dr. Dunbar found claimant's

condition was compatible with the injury. Claimant relies on this assertion by Dr. Dunbar. However, Dr. Dunbar is not an orthopedic surgeon. The orthopedic surgeons who did evaluate him (Drs. Lyles and Cohen) provided no evidence of causal connection between the tears and the accident.

¶ 23 Only the testimony of Dr. Cohen (in the form of a deposition) was presented at the hearing. His testimony was clear that striking a padlock using the heel of his hand (otherwise known as the hypothenar eminence where the ulnar nerve travels through from the fingers) as a hammer would not result in the hyperextension of the wrist. Claimant suggests Dr. Cohen misinterpreted the mechanism claimant used to force the lock closed. Dr. Cohen repeatedly referred to using the palm as a hammer. Claimant suggests this characterization was incorrect because claimant used his palm in an upward motion. Claimant's correction assumes Dr. Cohen's use of the term hammer meant only using the palm in a downward stroke. Claimant's assumption is not supported by the evidence. Dr. Cohen's use of the word hammer presumably referred to using the palm of one's hand to strike an object, whether striking upward or downward. Dr. Cohen repeatedly stated he understood claimant struck the lock with an uppercut motion.

¶ 24 The crux of Dr. Cohen's testimony was that striking a padlock with the palm of the hand would not cause a hyperextension of the wrist. Claimant's own testimony that he indeed hyperextended his wrist when it "bent backwards" was merely a self-serving conclusion. Further, in Dr. Cohen's opinion, striking a padlock with the palm of the hand would not cause a tear in the TFCC, neither a degenerative nor an acute tear. Dr. Cohen testified that claimant was more susceptible to a degenerative tear because his ulna bone was longer than his radius bone. He also said it was common for someone claimant's age to have asymptomatic tears. It was "absolutely"

possible for a previously asymptomatic tear to become symptomatic upon the occurrence of a traumatic injury. However, that traumatic injury would necessarily involve the hyperextension of the wrist. And again, the evidence does not support the medical conclusion that claimant's traumatic injury involved the hyperextension of his wrist.

¶ 25 The Commission's finding is supported by the manifest weight of the evidence. Claimant failed to demonstrate that his condition of ill-being, the tears in his wrist requiring surgical intervention, was caused by his work-related accident on May 4, 2012, when he struck a padlock with the heel of his hand. An opposite conclusion is not clearly apparent. See *City of Springfield*, 388 Ill. App. 3d at 312-13. Accordingly, the Commission committed no error in denying claimant compensation under the Act.

¶ 26 III. CONCLUSION

¶ 27 For the reasons stated, we affirm the circuit court's judgment, which affirmed the Commission's decision.

¶ 28 Affirmed.

¶ 29 PRESIDING JUSTICE HOLDRIDGE, dissenting.

¶ 30 In this matter, the Commission relied exclusively on the opinion of Dr. Cohen that the claimant's condition of ill-being was not causally related to his May 4, 2012, work-related accident. Dr. Cohen reached this conclusion by surmising that the mechanism of the claimant's injury involved a downward "hammer" motion striking the lock with a stabilized wrist. Based on this supposition, Dr. Cohen opined that such a motion would not likely produce tears to the TFCC or scapholunate ligament as diagnosed in the claimant. Given his understanding of the mechanics of the accident, Dr. Cohen further surmised that, since over one-third of all individuals over 40 years of age have asymptomatic micro-tears in the ligaments of the wrist, it

would be more likely that the claimant's condition was entirely related to a degenerative condition. Dr. Cohen further speculated that the claimant's congenital condition of his ulna and radius might have predisposed him toward the diagnosed TFCC and ligament tears.

¶ 31 There is nothing in the record, however, to support Dr. Cohen's description of the mechanism of injury as a "downward" or "hammer" motion. He does not report that the claimant described the accident using those terms. In fact, nowhere in the record is there a report of the claimant describing the event in those terms. To the contrary, the claimant credibly testified that he struck the lock in an upward or "uppercut" motion. Moreover, Dr. Lyles, the claimant's treating surgeon, reached a different conclusion, opining that the claimant's condition of ill-being was consistent with a recent traumatic occurrence.

¶ 32 It is axiomatic that the Commission's purview is to weigh medical evidence and resolve conflicts between medical opinion testimony, and on appeal, "[w]e will not merely reevaluate the credibility of [conflicting medical expert] witnesses and substitute our judgment for that of the Commission." *Compass Group v. Illinois Workers' Compensation Comm'n*, 2014 IL App (2d) 121283WC, ¶ 19. However, "[e]xpert opinions must be supported by facts and are only as valid as the facts underlying them." (Internal quotation marks omitted.) *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC, ¶ 24; see also *Sunny Hill of Will County v. Illinois Workers' Compensation Comm'n*, 2014 IL App (3d) 130028WC, ¶ 36. "An expert opinion is only as valid as the reasons for the opinion." (Internal quotation marks omitted.) *Gross*, 2011 IL App (4th) 100615WC, ¶ 24. If the foundational basis of an expert's opinion is grounded in guess or surmise, it is too speculative to be reliable. *Id.*

¶ 33 Here, the reasons cited by Dr. Cohen in support of his causation opinion do not support the opinion and are based exclusively on "factual" suppositions that are not supported

anywhere in the record. First, Dr. Cohen's description of the mechanism of the injury as a "hammer" motion is not supported by any facts contained in the record. He does not indicate how he arrived at his conclusion regarding the mechanics of the claimant's injury, other than his observation that "acute tears typically occur from a fall on the outstretched hand" while "chronic tears can occur otherwise." Without any basis in the facts presented to him, Dr. Cohen speculated that the claimant could not have injured the tendons and ligaments in his wrist because the muscles of the wrist stabilized ligaments and tendons thereby preventing the injuries of the nature suffered by the claimant. But, as his testimony clearly shows, the explanation that the muscles stabilized the wrist ligaments and tendons is only valid if it is presumed that the claimant was striking the lock using a downward "hammer" motion. Moreover, it was only by ruling out injury resulting from the claimant striking the lock in a "hammer" like manner that Dr. Cohen could then speculate that the claimant's condition of ill-being was either completely degenerative or the result of a congenital condition. Clearly, if his description of the mechanics of the accident is flawed and unsupported by the record, then his speculation as to alternative causes of the claimant's condition have no factual validity.

¶ 34 I do not believe that there is sufficient evidence in the record to support the opinion of Dr. Cohen that the claimant's condition of ill-being was caused entirely by either a degenerative or congenital condition. His opinion that the claimant's injury was not causally related to his employment is predicated entirely upon an understanding of the mechanics of the injury that is not supported in the record. In contrast, Dr. Lyles opined that the claimant's condition was traumatically induced and the claimant's unrebutted testimony established that his wrist pain began only after he struck the lock in an upward manner in contradiction to Dr. Cohen's supposition.

¶ 35 In sum, although Dr. Cohen asserted that the claimant's condition of ill-being was not casually related to his employment, he did not provide a proper factual foundation to establish the reliability of his opinion. I would, therefore, reverse the Commission's finding on causation and remand the matter to the Commission for further proceedings.