Workers' Compensation
Commission Division
Order Filed: September 27, 2018

No. 4-17-0888WC

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IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

CITY OF SPRINGFIELD,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Sangamon County
	)	
v.	)	No. 2017 MR 584
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION *et al.*,	)	Honorable
	)	Brian Otwell,
(Jeff Wiese, Appellee).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held*: We affirmed the circuit court's order which confirmed the Commission's decision which awarded the claimant benefits under the Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 2014)), for injuries to his spine.

¶ 2 The City of Springfield appeals from an order of the circuit court of Sangamon County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission) awarding the claimant, Jeff Wiese, benefits under the Workers' Compensation Act (Act) (820

ILCS 305/1 et seq. (West 2014)), for injuries to his spine. For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 The following factual recitation is taken from the evidence adduced at the arbitration hearing held on January 14, 2016.

¶ 4 The claimant testified that, on April 24, 2014, he was employed by the City as a janitor. He stated that he was assigned to pick up logs after trees had been trimmed and was working with his foreman. According to the claimant, he picked up a log weighing approximately 10 pounds, twisted his body from left to right, and threw the log into the back of a truck. As he did so, he felt a sharp pain in his back, radiating down his leg. The claimant stated that he had never experienced a shooting pain in his leg prior to that date. He admitted that he had seen a chiropractor years earlier for soreness in his back, but stated that after completing those treatments his symptoms resolved. The claimant testified that, after he experienced the pain in his back, he stopped picking up logs and immediately returned to the City's office on Groth Street and filled out an accident report with his supervisor.

¶ 5 The claimant stated that he was directed to Midwest Occupational Health Associates (MOHA) for treatment where he was seen and evaluated by a nurse practitioner. The claimant was given an injection of Toradol, prescribed pain medication, and placed on work restrictions of no lifting greater than 10 pounds, no pushing or pulling, no driving of lawnmowers or tractors, no repetitive waist bending, and no shoveling.

¶ 6 On April 30, 2014, the claimant returned to MOHA and was seen by Dr. Matthew Yociss. The claimant reported that he was still experiencing back pain. He stated that he had remained in bed for the entire weekend without relief. Dr. Yociss examined the claimant and diagnosed an acute left lumbar strain. The doctor continued to prescribe pain medication and

referred the claimant for physical therapy. According to the claimant, however, he did not participate in physical therapy because he wanted to get a second opinion.

¶ 7 The claimant was next seen by Dr. Yociss on May 8, 2014. The records of that visit reflect that the claimant reported an increase in back pain and a pulling and burning sensation when he bent over. He stated that he was having trouble lying down and sitting up. Dr. Yociss's examination of the claimant revealed tenderness of the paraspinal musculature of the left lumbar spine, radiating into the left buttock and decreased strength in the left leg as compared to the right. Dr. Yociss continued the claimant's work restrictions and ordered an MRI of the lumbar spine.

¶ 8 The claimant had the recommended MRI on May 9, 2014. That scan revealed mild spondylolisthesis with bilateral spondylolysis at L5-S1 and severe left and moderate to severe right neuroforaminal stenosis at L5-S1.

¶ 9 On May 12, 2014, the claimant returned to MOHA and was seen by Dr. Ferguson. The claimant reported that he had not experienced any relief of his symptoms. Dr. Ferguson noted that the MRI of the claimant's lumbar spine showed a degenerative condition. The doctor recorded an impression that the claimant's pain was related to chronic changes. The claimant was advised to see his personal physician and discharged from care.

¶ 10 On May 14, 2014, the claimant presented at the office of his primary-care physician, Dr. Lanzotti, and was seen by his physician's assistant, Mindy Sanders. The records of that visit reflect that the claimant gave a history of experiencing pain in his back while picking up a log on April 24, 2014. He reported that his back pain had not improved. Sanders reviewed the MRI, noting that it revealed neural foraminal stenosis in the lumbar spine. She prescribed prednisone

and cyclobenzaprine; referred the claimant to Dr. William Payne, an orthopedic surgeon; and placed the claimant on a no-work restriction.

¶ 11 The claimant was seen on May 22, 2014, by Jennifer Nichelson, a physician's assistant in Dr. Payne's office. He reported severe low-back paid radiating into his left leg which he had been experiencing for approximately one month and stated that it was getting worse. An examination of the claimant during that visit revealed some tightness in the back of his left leg, weakness in the left leg generally, and pain in his back with a decreased range of motion on flexion and extension. Nichelson reviewed the MRI of the claimant's lumbar spine and took standing x-rays. According to the records of that visit, the x-rays showed grade 2 lytic spondylolisthesis at L5-S1 which appeared more pronounced on the x-ray than on the MRI. Dr. Payne testified that he reviewed the studies independently and also noted lytic spondylolisthesis at L5-S1 with severe foraminal stenosis. Nichelson diagnosed grade 2 lytic spondylolisthesis at L5-S1 and bilateral foraminal stenosis, most severe on the left, with left-sided radiculopathy at L5. She recommended that the claimant have a steroid injection and meet with Dr. Payne for a surgical consultation in the event that the injection was not successful.

¶ 12 On May 27, 2014, Dr. Gary Western administered a left-sided L5-S1 transforaminal epidural steroid injection to the claimant. According to the claimant, the injection failed to provide any pain relief.

¶ 13 When the claimant was seen by Dr. Payne on June 12, 2014, he reported no relief from the epidural steroid injection and complained of severe L5 radicular pain. Dr. Payne noted grade 2 slippage and recommended that the claimant undergo an L5-S1 fusion and a decompression of the nerve. He referred the claimant back to Dr. Lanzotti for a pre-operative examination and restricted the claimant to no work pending surgery.

¶ 14 When deposed, Dr. Payne testified that an individual can have lytic spondylolisthesis with severe foraminal stenosis and yet have no symptoms. He stated that lytic spondylolisthesis is a chronic stress fracture that is generally incurred during childhood. Assuming that the claimant had only aches and pains and no radicular complaints prior to his work accident on April 24, 2014, Dr. Payne was of the opinion that the mechanism of injury described by the claimant contributed to his pain. He testified that, "anytime you are twisting in the lumbar spine, we know that the orientation of the fibers of the outer layers of the discs are oblique, and they kind of cross each other, and twisting puts them—kind of their weakest point." Due to the claimant's preexisting foraminal stenosis, the twisting motion compressed the nerve which could have irritated the L5 nerve root. According to Dr. Payne, something occurred when the claimant twisted and lifted that caused his symptoms. His nerve was irritated and could not recover.

¶ 15 On July 28, 2014, the claimant underwent lumbar surgery which was performed by Dr. Payne. The surgery consisted of a laminectomy of L5, a posterior fusion of L5-S1 with segmental instrumentation, a transforaminal lumbar interbody fusion with cage at L5-S1, an allograft bone, and aspiration of the left iliac crest. A 12 millimeter by 22 millimeter cage, a 5.5 rod, and a number of solera pedicle screws were placed in the claimant's lumbar spine. When deposed, Dr. Payne admitted that he found no herniated disc material when he performed the surgery. He stated that the claimant suffered from a pseudo-bulge which was caused by his underlying spondylolisthesis. According to the claimant, the surgery alleviated the numbness in his legs, but he continued to experience lumbar pain post-operatively.

¶ 16 On July 21, 2014, the claimant's wife called Dr. Payne's office and reported that the claimant was experiencing severe headaches and had received no relief from the pain medication he was prescribed. The doctor's nurse recommended that the claimant continue his pain

medication and come to the office the following day. On August 1, 2014, the claimant was seen at Dr. Payne's office for his headaches.

¶ 17 When the claimant was next seen by Dr. Payne on August 14, 2014, he complained of severe pain in his lower back, but reported that he was no longer experiencing leg pain. An x-ray was taken of the claimant's back which revealed a reduction of the spondylolisthesis and good cage placement. Dr. Payne prescribed Percocet for the claimant's low back pain and instructed him to return for a follow-up examination in one month.

¶ 18 On October 20, 2014, the claimant was examined by Dr. Donald deGrange, an orthopedic surgeon, at the City's request. Dr. deGrange testified that the claimant gave a history of having injured his back picking up tree limbs and branches while working on April 24, 2014, and described his movements that resulted in the onset of pain. Dr. deGrange stated that his examination of the claimant revealed both a decreased range of motion and decreased extension. Based upon his review of the claimant's MRI, Dr. deGrange noted isthmic spondylolisthesis at L5-S1. He testified that the isthmic or lytic spondylolisthesis was a stress fracture in the area of the L5 lamina that never fully healed. As a consequence of the condition, there was instability in the claimant's spine which, along with micromotion over the years, accelerated the wearing out of the L5-S1 disc, causing foraminal stenosis. According to Dr. deGrange, the claimant's ongoing pain was consistent with a lack of solid bony fusion, and he stated that, if the claimant continued to have a non-bony fusion, it would result in pseudoarthrosis. Dr. deGrange was of the opinion that, although the claimant may have suffered a lumbar strain on April 24, 2014, the mechanism of lifting a 10 pound log, twisting, and throwing the log could not cause an aggravation of his spondylolisetic condition to the point which would require surgical intervention. He admitted, however, that a person with spondylolisthesis can be asymptomatic.

He also admitted that the claimant would not have been a surgical candidate absent symptomology, and there was a temporal relationship between the onset of the claimant's radicular complaints and his work accident. Nevertheless, Dr. deGrange was of the opinion that the claimant's April 24, 2014 trauma did not cause his underlying spondylolisthesis to become symptomatic. He stated that causation cannot be inferred from a temporal association. Dr. deGrange testified that the claimant could return to work with a 15-pound lifting restriction along with no repetitive bending and twisting. He also testified that the medical treatment that the claimant received for his spondylolisthesis was appropriate.

¶ 19 The claimant next saw Dr. Payne on October 23, 2014. At that time, he reported difficulties in bending and twisting. The x-rays taken of the claimant's back on that date showed an appropriate post-surgical alignment. Dr. Payne prescribed physical therapy.

¶ 20 The claimant began physical therapy on November 7, 2014, at the Springfield Clinic. On December 4, 2014, the claimant told his physical therapist that his pain had improved 75% since surgery and that his back was getting stronger with exercise. On December 18, 2014, he told the therapist that he was improving and that his pain had decreased.

¶ 21 On January 5, 2015, Dr. Payne authorized the claimant to return to work without restrictions. The claimant testified that he requested Dr. Payne to authorize his return to full-duty work. He stated that he made the request for financial reasons as he was not receiving temporary total disability (TTD) benefits and had exhausted his vacation pay, sick time and other benefits by August or early September of 2014. According to the claimant, he had been told that he could not return to work until his work restrictions were lifted. He testified that, although he requested Dr. Payne to authorize his return to work without restrictions, he continued to experience pain.

¶ 22 When the claimant saw Dr. Payne on March 26, 2015, he was complaining of back pain. The records of that visit reflect that Dr. Payne noted that a non-union at the fusion site was possible. X-rays of the claimant's back were taken on that date which showed that the hardware was in place. Nevertheless, Dr. Payne ordered a CT scan of the claimant's lumbar spine to rule out pseudoarthrosis.

¶ 23 A CT scan of the claimant's lumbar spine was performed on April 6, 2015. When the claimant saw Dr. Payne on April 7, 2015, the doctor reviewed the CT films and noted that they showed a non-solid fusion of the disc space. Dr. Payne discussed the possibility of revision surgery, but the claimant opted not to undergo the procedure.

¶ 24 The claimant last saw Dr. Payne on July 29, 2015. At that time, he complained of significant daily back pain although he was experiencing less pain than before his surgery. When deposed, Dr. Payne testified that the claimant's L5-S1 fusion places extra stress on the space above L4-L5. He stated that the claimant already had some degeneration at L4-L5 and opined that the claimant had about a 10% chance of getting spondylolisthesis at L4-L5 in 10 to 20 years.

¶ 25 On referral from Dr. Payne, the claimant saw Dr. Koteswara Narla, a pain management specialist, on October 6, 2015. Dr. Narla prescribed Zanaflex and Ultram. However, the claimant testified that the drugs did not provide any relief from his back pain.

¶ 26 Desirous of a second opinion, the claimant presented to Dr. Timothy VanFleet, an orthopedic surgeon, on October 30, 2015. He reported ongoing lower back pain which he had experienced for a year. He stated that the pain was constant and was exacerbated by walking, sitting, and standing. On examination, Dr. VanFleet found that the claimant had difficulty with extension. Dr. VanFleet reviewed the films of the claimant's CT scan and noted that there was no evidence of a solid fusion at L5-S1. He also noted evidence of pseudoarthrosis and that the L5

screws were violating the L4-L5 facet joints bilaterally. Dr. VanFleet recommended that the claimant undergo a revised spinal fusion for pseudoarthrosis, but advised the claimant that he only had a 50/50 chance of improvement in his current symptomology.

¶ 27 At the arbitration hearing on January 14, 2016, the claimant testified that he had been working full duty in his position with the City since January 5, 2015, performing the same work that he did before his accident. According to the claimant, his back is sore after finishing a day's work, and he experiences a lot of pain when he lifts over 25 pounds. He stated that he has constant pain, continues to take Tramadol as prescribed by Dr. Narla, and applies heat or ice on his back every day when he comes home from work. The claimant admitted that he had not seen a physician for his back pain in the three months before the hearing. He testified that he decided not to undergo a second surgery because there is only a 50/50 chance of improvement.

¶ 28 Following the hearing, the arbitrator found that the claimant sustained accidental injuries arising out of and in the course of his employment with the City and that his current condition of spinal ill-being is causally related to his work accident. The arbitrator awarded the claimant 31 1/7 weeks of temporary total disability (TTD) benefits under section 8(b) of the Act (820 ILCS 305/8(b) (West 2014)), and permanent partial disability (PPD) benefits for a period of 150 weeks under section 8(d)2 of the Act (820 ILCS 305/8(d)2 (West 2014)) for a 30% loss of the person as a whole. In addition, the arbitrator ordered the City to pay for all reasonable and necessary medical services rendered to the claimant.

¶ 29 The City sought a review of the arbitrator's decision before the Commission. In a decision with one commissioner dissenting, the Commission affirmed and adopted the arbitrator's decision. The dissenting commissioner found that the claimant's current condition of

ill-being was caused by a degenerative condition, not his work-related lumbar strain, and that he was only entitled to 15 weeks of PPD benefits for a 3% loss of the person as a whole.

¶ 30 The City sought a judicial review of the Commission's decision in the circuit court of Sangamon County. The circuit court confirmed the Commission's decision, and this appeal followed.

¶ 31 The City first argues that the Commission's finding that the claimant's condition of lumbar spine ill-being is causally related to his work-related accident of April 24, 2014 is against the manifest weight of the evidence. Relying upon the opinions of Dr. deGrange, the City asserts that, on April 24, 2014, the claimant may have suffered a lumbar strain, but his actions of lifting a 10 pound log, twisting and throwing the log did not cause his underlying spondylolisthesis to become symptomatic or necessitate a spinal fusion. The City characterizes Dr. Payne's contrary opinions as speculation, conjecture, or guesswork. Following the dissenting commissioner's separate opinion, the City contends that the manifest weight of the evidence established that the claimant's work-related accident did not aggravate his underlying degenerative condition and that his need for treatment was the result of a pre-existing condition of spondylolisthesis.

¶ 32 The claimant has the burden of establishing by a preponderance of the evidence the elements of his claim, including "some causal relation between the employment and the injury." *Caterpillar Tractor Co. v. Industrial Comm'n*, 129 Ill. 2d 52, 63 (1989). Whether a causal relationship exists between a claimant's employment and his condition of ill-being is a question of fact to be resolved by the Commission, and its resolution of the issue will not be disturbed on review unless it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244 (1984). In resolving such issues, it is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve

conflicting medical evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's determination of a question of fact is supported by the manifest weight of the evidence; rather, the appropriate test is "whether there was sufficient evidence in the record to support the Commission's decision." *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450 (1982).

¶ 33 Employers take their employees as they find them, and even though an employee has a pre-existing condition that makes him more vulnerable to injury, recovery for an accidental work injury will not be denied as long as it can be shown that the employment was a causative factor. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Recovery in such a case will depend upon the claimant's ability to show that his work-related accident aggravated or accelerated the condition such that the current condition of ill-being can be said to have been causally connected to the work accident and not simply the result of a normal degenerative process of the pre-existing condition. *Id.* at 204-05.

¶ 34 In this case, it is undisputed that the claimant suffered from spondylolisthesis prior to his work-related accident of April 24, 2014. However, the claimant testified that, prior to his work accident, he only suffered occasional back soreness and had not sought any treatment for his back in over 10 years. Dr. Payne and Dr. deGrange agreed that it is common for an individual with spondylolisthesis to be asymptomatic. Dr. Payne was of the opinion that the mechanism of injury described by the claimant contributed to his pain. He testified that due to the claimant's preexisting foraminal stenosis, when he twisted the nerve root compressed. According to Dr. Payne, something occurred when the claimant twisted and lifted that caused his symptoms. The claimant's nerve was irritated and could not recover. In adopting the arbitrator's decision, the Commission found Dr. Payne's causation opinion to be more credible than the contrary opinion

of Dr. deGrange who found that, on April 24, 2014, the claimant only suffered a back strain and that the trauma which the claimant suffered on that date did not cause his underlying spondylolisthesis to become symptomatic. In crediting the causation opinion of Dr. Payne over the opinion of Dr. deGrange, the Commission noted that Dr. Payne was the claimant's treating physician and his opinion is more consistent with the onset of the claimant's symptoms and his ongoing symptomatology.

¶ 35 It was the function of the Commission to resolve the conflict in medical testimony, and we will not substitute our judgment merely because it is possible to draw a different inference from the evidence. Based upon the causation opinion of Dr. Payne which the Commission credited, we are unable to conclude that the Commission's finding that a causal relationship exists between the claimant's work-related accident of April 24, 2014 and his current condition of ill-being is against the manifest weight of the evidence.

¶ 36 As alternative arguments, the City asserts that the Commission's award of PPD benefits for a 30% loss of the person as a whole is both contrary to law and against the manifest weight of the evidence. In its brief, the City fails to separate the arguments. Rather, it presents the issues as if they were a single argument. We will address the question of whether the Commission's PPD award is contrary to law separate from the question of whether the award is against the manifest weight of the evidence.

¶ 37 The City appears to argue that, in awarding the claimant PPD benefits, the Commission did not to comply with the requirements of section 8.1b(b) of the Act (820 ILCS 305/8.1b(b) (West 2016)) by failing to state in its decision how the factors to be considered in determining the level of PPD were weighed. It contends that the decision fails to state whether each of the factors either "mitigated or aggravated the disability finding." We disagree.

¶ 38 Section 8.1b(b) of the Act provides that:

> "In determining the level of permanent partial disability, the Commission shall base its determination on the following factors: (i) the reported level of impairment pursuant to subsection (a); (ii) the occupation of the injured employee; (iii) the age of the employee at the time of the injury; (iv) the employee's future earning capacity; and (v) evidence of disability corroborated by treating medical records. No single enumerated factor shall be the sole determinant of disability. In determining the level of disability, the relevance and weight of any factors used in addition to the level of impairment as reported by the physician must be explained in a written order." 820 ILCS 305/8.1b(b) (West 2016)

¶ 39 In this case, neither party submitted a physician's disability impairment report as contemplated by section 8.1b(a) of the Act (820 ILCS 305/8.1b(a) (West 2016)). As a consequence, the Commission was required to base its PPD determination upon the remaining four factors set forth in section 8.1b(b). *Corn Belt Energy Corp. v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3d) 150311WC, ¶ 49.

¶ 40 The decision of the arbitrator which the Commission adopted specifically acknowledges the requirement to base the PPD determination on the five factors set forth in section 8.1b(b) of the Act. After noting that no physician's impairment report was prepared, the decision addresses each of the four remaining factors for consideration. After setting forth the facts relied upon in support of each of the factors, the decision states the weight accorded each factor. The decision states that: (1) the claimant's occupation "supports" the claim for permanency; (2) "significant weight" was placed on the claimant's age at the time of his injury; (3) "very little weight" was placed upon the claimant's future earning capacity; and (4) "significant weight" was placed on

the evidence of disability as corroborated by the claimant's medical treatment records. We find, therefore, that the Commission complied with the statutory requirements in making its PPD determination.

¶ 41 Next, we address the City's argument that the Commission's PPD award for a 30% loss of the person as a whole is against the manifest weight of the evidence. The City contends that the evidence does not support the conclusions which the Commission reached as to the four factors for consideration. According to the City, the Commission relied upon the "subjective, self-serving statements" of the claimant which are belied by the facts and the medical records. The City notes that: the claimant continues to perform his regular duties with no restrictions; he admitted telling his physical therapist that his pain level had improved 75% and his back was stronger; he told Dr. Narla that he had no leg pain, numbness or weakness; the claimant's medical records establish that he has no sensory loss, numbness or weakness in his legs; his income is the same or higher than prior to his injury; and his medical records fail to reflect any objective abnormalities or radicular deficits.

¶ 42 It is clear from the arbitrator's decision which the Commission adopted that the claimant's testimony was relied upon in determining the level of his PPD. Although the City characterizes the claimant's testimony as "self-serving," is clear that he was found to be credible. The Commission found that, although the claimant is working full duty, without restrictions, he "continues to have significant pain and symptoms associated with his work" and "has a significant number of working years ahead of him, during which he will endure ongoing pain." The Commission also found that the claimant's testimony of ongoing pain in his lumbar spine is consistent with his medical records and the testimony of Drs. Payne and deGrange.

¶ 43 As stated earlier, it was the Commission's function to judge the credibility of the witnesses and determine the weight to be accorded their testimony. *O'Dette,* 79 Ill. 2d at 253. The Commission obviously found the claimant credible and accorded significant weight to his testimony. We will not disturb that finding or reweigh the evidence. The testimony of the claimant, coupled with his medical records and the testimony of his treating physician, are more than sufficient to support the conclusions reached by the Commission in making its PPD determination.

¶ 44 The nature and extent of an injured employee's disability is a factual question, the resolution of which is peculiarly in the province of the Commission's expertise, and its determination of the issue will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Illinois Forge, Inc. v. Industrial Comm'n*, 95 Ill. 2d 337, 343 (1983); *Shockley v. Industrial Comm'n*, 75 Ill. 2d 189, 193 (1979). Based upon the record before us, we are unable to conclude that the Commission's PPD award for a 30% loss of the person as a whole is against the manifest weight of the evidence.

¶ 45 For the reasons stated, we affirm the judgment of the circuit court which confirmed the Commission's decision.

¶ 46 Affirmed.