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2018 IL App (4th) 170945WC-U

Order filed October 2, 2018

IN THE
APPELLATE COURT OF ILLINOIS
FOURTH DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

ROBERT WALCH,)	Appeal from the Circuit Court
)	of the Seventh Judicial Circuit,
)	Sangamon County, Illinois
)	
Appellant,)	
)	
v.)	Appeal No. 4-17-0945WC
)	Circuit No. 17-MR-34
)	
ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION, <i>et al.</i> , (Freeman United Coal)	Rudolph Braud,
Mining Co., Appellees).)	Judge, Presiding.

PRESIDING JUSTICE HOLDRIDGE delivered the judgment of the court.
Justices Hoffman, Hudson, Cavanagh, and Barberis concurred in the judgment.

ORDER

¶ 1 *Held:* The Commission's decision that the claimant failed to prove he suffered from an occupational disease was not against the manifest weight of the evidence.

¶ 2 The claimant, Robert Walch, appeals a decision of the Illinois Workers' Compensation Commission (Commission) denying his claim for benefits under the Illinois Workers'

Occupational Diseases Act (Act) (820 ILCS 310/1 *et seq.* (West 2010)). The Commission found that the claimant failed to prove he suffered from an occupational disease. The Commission's

decision affirmed and adopted the decision of the arbitrator, who found that the preponderance of

the medical evidence and opinion testimony failed to establish that the claimant suffered from an occupational disease. The claimant sought judicial review of the Commission's decision in the circuit court of Sangamon County. The circuit court confirmed the Commission's decision, finding that it was not against the manifest weight of the evidence.

¶ 3 The sole issue on appeal is whether the Commission's finding that the claimant failed to prove that he suffered from an occupational disease related to his coal mining employment was against the manifest weight of the evidence.

¶ 4 **FACTS**

¶ 5 The following factual recitation is taken from the evidence presented at the arbitration hearing held before Arbitrator Michael Nowak in Mt. Vernon, Illinois, on June 3, 2015.

¶ 6 The claimant testified that was 59-years-old at the time of his last employment. He worked in coal mining for 30 years, with all of those years being underground. He testified, that during his employment, he was regularly exposed to coal dust, silica dust, roof bolting glue fumes, diesel fumes and smoke from coal fires. The claimant's last day of employment with Freeman United Coal Mining Co. (employer) was August 29, 2007. His classification on that last day was repairman. He testified that he was exposed to coal mine dust on that day. He further testified that his last day of coal mining was because the coal mine shutdown. He did not look for work in a coal mine after his mine shutdown. The claimant testified that he first noticed his breathing problems two or three years before the mine closed. He noticed that he was short of breath all the time and could not exert himself without panting. He also testified, that from the time he first noticed breathing problems until he left the mine, his breathing problems worsened. He testified that after leaving mining his breathing problems became worse. He testified that he could walk three city blocks on level ground before becoming short of breath. He testified that he

has a flight of stairs in his house with 13 or 14 steps, and by the time he gets to the top of them, he needs to sit down and catch his breath. The claimant testified he was not taking breathing medication at the time of arbitration. He testified that his breathing affects his daily physical activities. He testified that he smoked for about two and a half years when he was 19 or 20 before he went to work in the mine, but he had not smoked in over 40 years. He also testified that three months prior to the arbitration hearing he had six-artery bypass surgery. He reported that he was slowly healing. He also underwent fusion surgery in his neck right before his heart surgery and he was still taking pain medication related to that surgery.

¶ 7 The claimant also testified, that if he were not laid off when the mine closed on August 29, 2007, he would have showed up for his next shift. He worked for Agri-Tech for about two years after the mine closed. During the first year, he picked up lawnmowers and delivered them for repairs. In the second year, he performed some motor repairs. He testified that his plan to work on old cars after his retirement never came to fruition. He testified that he has not worked since he worked for Agri-Tech.

¶ 8 The record contains depositions and medical treatment notes of no less than nine physicians. The following is a summary of the medical evidence.

¶ 9 On June 25, 2012, the claimant was examined by Dr. William Charles Houser, at the suggestion of the claimant's attorney. Dr. Houser testified that he is a pulmonary specialist with a practice in various forms of lung disease including occupational asthma, asbestosis, silicosis and coal workers' pneumoconiosis (CWP). Dr. Houser estimated that approximately 20% of his practice deals with the care and treatment of coal miners. Dr. Houser has been the medical director of the Black Lung Clinic at Deaconess Hospital in St. Louis Missouri. He is board certified in internal medicine, pulmonary disease and critical care medicine. He is not a B-reader.

Dr. Houser saw the claimant on one occasion.

¶ 10 The claimant gave a history to Dr. Houser of shortness of breath for at least the last two to three years. He also reported having a fairly persistent cough of approximately one year. He also reported smoking for approximately two years between 1975 and 1977, up to one pack per day. Dr. Houser noted that the claimant's chest was clear of percussion and auscultation and there was no rales, rhonchi, wheezing, pleural rub or bronchial breath sounds noted. The spirometry test was normal. Dr. Houser reviewed a chest x-ray dated January 31, 2012, in which he noted P/P opacities in both the upper and mid lung zones, CWP category 1/0. Dr. Houser also reviewed a report on that x-ray prepared by Dr. Charles Whitehead, a board certified radiologist and B-reader, who noted CWP category 1/0. Dr. Houser diagnosed CWP category 1. He further testified, that since the claimant had evidence of CWP, he should avoid additional exposure to coal and rock dust, as additional exposure would increase the likelihood of progression of the disease process. Dr. Houser acknowledged that the screening for CWP is not a physical examination but must be done by skilled reading of an x-ray. He further noted that the screening test for COPD is not a physical exam but a pulmonary function test. Subsequent to his examination of the claimant, Dr. Houser reviewed the claimant's medical records. He testified, that assuming that the claimant was last occupationally exposed in 2007, based on the natural history of the disease, it was quite likely that the pneumoconiosis would have been present at the time the claimant left the coal mines and possibly 10 to 15 years prior to that.

¶ 11 Dr. Henry K. Smith, board certified radiologist and B-reader, interpreted a chest x-ray of the claimant dated May 7, 2007, as positive for CWP category 1/1 with P/S opacities in all lung zones. Dr. Smith made an identical interpretation of the chest x-rays dated January 31, 2012, and March 12, 2012.

¶ 12 Dr. Michael Alexander, board certified radiologist and certified B-reader, interpreted a chest x-ray dated May 7, 2007, as positive for CWP profusion 1/0 with P/P opacities in all lung zones. Dr. Alexander interpreted the March 2, 2012, chest x-ray as positive for CWP profusion 1/1 with P/T opacities in all lung zones.

¶ 13 Interpretations by NIOSH of chest x-rays taken as part of the Coal Workers' Health Surveillance Program were admitted into evidence. The claimant underwent a chest x-ray on May 7, 2007. One NIOSH B-reader found the film to be quality 3 due to overexposure, artifacts, improper position, poor contrast and fog. That B-reader found no abnormalities consistent with CWP. A second NIOSH B-reader found the film to be quality 2 due to artifacts, improper position and poor processing. That B-reader also found no abnormalities consistent with CWP.

¶ 14 At the request of counsel for the employer, Dr. Christopher A. Meyer reviewed the chest x-rays of the claimant dated May 7, 2007, January 31, 2012, and March 2, 2012. Dr. Meyer is board certified in radiology and is a B-reader. Dr. Meyer testified that the May 7, 2007, film was quality 2 due to poor contrast, and scapular overlap and that the January 2012 film was underexposed with poor contrast and he gave it a quality 3 rating. He testified that the most recent examination from March 2012 was quality 1. Dr. Meyer's interpretation of the May 7, 2007, film was that there was a calcified granuloma in the right mid zone and left costophrenic angle and that the lungs were otherwise clear with no findings of CWP. Dr. Meyer's interpretation of the January 31, 2012, film also showed a calcified granuloma and no indication of CWP. Dr. Meyer further testified that his interpretation of the March 2, 2012, film was identical.

¶ 15 Dr. Meyer testified that a B-reader has the special expertise necessary to interpret radiological data necessary to diagnose CWP. He testified that a B-reader is trained to look at the

films of the lung to decide whether there are any small nodular opacities or any linear opacities, and based on the size and appearance of the small opacities, they are given a letter score.

¶ 16 Also, at the request of the employer's counsel, Dr. James R. Castle reviewed medical records and films regarding the claimant. Dr. Castle is a pulmonologist and is board certified in internal medicine and in the subspecialty of pulmonary disease. Dr. Castle testified that his practice included treating patients with occupational lung diseases, including CWP. He testified that he has been certified as a B-reader since 1985. Dr. Castle reviewed chest x-rays dated May 7, 2007, January 31, 2012, and March 2, 2012. He found no abnormalities consistent with CWP on those films. He testified that there was evidence of calcified granulomas. Dr. Castle testified, that after a very thorough and extensive review of all of the submitted medical data, including the medical histories, physical examinations, radiographic evaluations, physiologic testing and other records, he concluded that the claimant does not have CWP. Dr. Castle noted that the medical records from the claimant's treating physician included a diagnosis of asthma. Dr. Castle, however, did not see any definitive evidence of chronic or acute asthma in the medical records that he reviewed. He testified that the claimant did not demonstrate any consistent findings indicating the presence of an interstitial, pulmonary process. Dr. Castle testified that the claimant did not have a consistent finding of rales, crackles or crepitation usually found with chronic respiratory issues. He further noted that the majority of the claimant's evaluations were normal. Dr. Castle testified that the tests ordered by Dr. Houser on June 26, 2012, were entirely normal and showed no evidence of obstruction or restriction. Dr. Castle opined that the claimant did not have any physiologic impairment from any cause. Dr. Castle further opined that the claimant did not have CWP or any pulmonary disease and had no impairment occurring as a result of his occupational exposure.

¶ 17 Dr. Roger McFarlin testified by deposition. He has a family practice in Hillsboro, Illinois, where he treats people of all ages including people with lung disease. He has been the claimant's primary care physician since 1970. Dr. McFarlin opined that the claimant has CWP that he contracted as a result of occupational exposure. He further opined that the claimant does not have the pulmonary capacity to perform the heavy manual labor of a coal miner. Dr. McFarlin's treatment records regarding the claimant from 1974 through 2007 contain no diagnosis of CWP. The claimant's treatment records show that Dr. McFarlin never placed any kind of work restrictions on the claimant due to respiratory issues. Dr. McFarlin acknowledged that he has no certified specialization in respiratory/pulmonary diseases and is not a B-reader.

¶ 18 The arbitrator weighed that competing medical testimony and determined that the claimant had failed to prove, by a preponderance of the evidence, that he had an occupational disease arising out of and in the course of his employment.

¶ 19 The arbitrator found the x-ray interpretations by Drs. Meyer and Castle and the independent NIOSH B-readers to be more persuasive than the interpretations by Drs. Houser, Smith and Alexander. The negative readings of the chest x-ray of May 7, 2007, by Drs. Castle and Meyer were confirmed by two independent NIOSH B-readers. The arbitrator found the NIOSH readings to be persuasive based on the independence and credibility of NIOSH opinions. The arbitrator further noted that the NIOSH B-readings confirmed that the claimant did not have x-ray evidence of CWP just two months before he left coal mining. The arbitrator further observed that Dr. Smith's interpretations of the x-rays from May 7, 2007, and March 12, 2012, were identical in showing no evidence of CWP. The arbitrator last noted that no physician made a finding of any other occupational disease.

¶ 20 The claimant appealed the arbitrator's decision to the Commission, which unanimously

affirmed and adopted the arbitrator's decision. The claimant then sought judicial review of the Commission's decision in the circuit court of Sangamon County, which confirmed the Commission's ruling. The claimant then filed this timely appeal.

¶ 21

ANALYSIS

¶ 22 On appeal, the claimant argues that the Commission's findings that he failed to establish that he suffered from an occupational disease arising out of and in the course of his employment and failed to establish that he suffered a disablement as a result of his condition were both against the manifest weight of the evidence. He maintains that the evidence clearly established that he was diagnosed with CWP, and that once a diagnosis of CWP is established, both causation and disablement are proven by the diagnosis. *Freeman United Coal Mining Co. v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120564WC.

¶ 23 The employer maintains, to the contrary, that the Commission merely weighed competing medical evidence and opinion testimony, rejected the diagnosis of occupational disease and found one set of experts more credible than the others. *Hicks v. Industrial Comm'n*, 251 Ill. App. 3d 320, 326 (1993).

¶ 24 The claimant in an occupational disease case has the burden of proving both that he suffers from an occupational disease and that a causal connection exists between the disease and his employment. *Anderson v. Industrial Comm'n*, 321 Ill. App. 3d 463, 467 (2001). Whether an employee suffers from an occupational disease and whether there is a causal connection between the disease and the employment are questions of fact. *Bernardoni v. Industrial Comm'n*, 362 Ill. App. 3d 582, 597 (2005); *Anderson*, 321 Ill. App. 3d at 467. Likewise, whether a claimant has established disablement or impairment is a question of fact for the Commission to determine, and its determination will not be overturned unless it is against the manifest weight of the evidence.

Forsythe v. Industrial Comm'n, 263 Ill. App. 3d 463, 469 (1994); *Plasters v. Industrial Comm'n*, 246 Ill. App. 3d 1, 8 (1993). It is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *Hosteny v. Illinois Worker's Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). 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. *Docksteiner v. Industrial Comm'n*, 346 Ill. App. 3d 851, 856-57 (2004). For a finding to be contrary to the manifest weight of the evidence, the opposite conclusion must be clearly apparent. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 539 (2007).

¶ 25 Here, the Commission's finding that the claimant did not suffer from CWP, COPD, or any respiratory occupational disease rests firmly upon the opinions of Drs. Castle and Meyer and the two independent NIOSH B-readers. That evidence was far from unchallenged. The claimant's medical experts, Drs. Houser, Smith, and Alexander, and the claimant's treating physician, Dr. McFarlin, all opined to an equal degree of medical certainty that the claimant suffered from CWP and/or COPD related to his employment. The weight to be accorded medical opinion testimony is not simply a matter of tallying up the number of experts or weighing their credentials. These experts have given opinions regarding CWP or COPD on numerous occasions, and all are recognized as qualified to give such opinions.

¶ 26 Regarding the weight accorded the conflicting medical opinions in this matter, the Commission adopted the reasoning and rationale of the arbitrator, who articulated specific reasons for weighing the conflicting evidence in the manner stated. The arbitrator articulated sound reasons for giving greater or lesser weight to each opinion and after reviewing the record, we cannot say that the Commission's findings were against the manifest weight of the evidence.

In the final analysis, unless the evidence on one side is so compelling as to render the opposite conclusion clearly apparent, we must defer to the Commission, which is uniquely situated to weigh competing medical evidence and to resolve any evidentiary conflicts. *Steak 'n Shake v. Illinois Workers' Compensation Comm'n*, 2016 IL App (3rd) 150500WC, ¶ 43. Here, it simply cannot be said that the conclusion opposite that reached by the Commission is clearly apparent. Rather, the evidence was, in many ways, evenly balanced, making the Commission the ultimate decision maker.

¶ 27 The claimant also maintains that the Commission erred in failing to find that he suffered from the occupational diseases of chronic bronchitis, COPD, and asthma, all aggravated by exposure to coal dust. The Commission's opinion on review adopting the arbitrator's decision addresses in significant detail the flaws in the claimant's case, particularly the fact that the claimant did not communicate any complaints of chronic cough to Dr. McFarlin until February 2011 and the fact that Dr. Castle interpreted Dr. Houser's test results as indicating the claimant was capable of heavy manual labor. We cannot say that the Commission's finding that the claimant did not establish that he suffered from occupational chronic bronchitis, COPD, or asthma was against the manifest weight of the evidence.

¶ 28 **CONCLUSION**

¶ 29 The judgment of the circuit court of Sangamon County, which confirmed the decision of the Commission is affirmed.

¶ 30 Affirmed.