2019 IL App (5th) 180139WC

No. 5-18-0139WC

Order filed: June 20, 2019

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IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

EDWARD HOLMES JR.,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Madison County.
	)	
v.	)	No. 17-MR-72
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION *et al.*	)	Honorable
	)	Thomas W. Chapman,
(CTS, Appellee).	)	Judge, presiding.

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

ORDER

¶ 1 *Held:* We affirm the circuit court's judgment confirming the Commission's decision to deny the claimant benefits where the Commission's determination that the claimant failed to prove an accident arising out of and in the course of his employment was not against the manifest weight of the evidence.

¶ 2 The claimant, Edward Holmes Jr., appeals from a judgment of the circuit court of Madison County, which confirmed the decision of the Illinois Workers' Compensation Commission (Commission), denying the claimant benefits under the Workers' Compensation Act (Act) (820 ILCS

305/1 *et seq.* (West 2014)) for failure to prove that he suffered an accident arising out of and in the course of his employment with Construction & Turnaround Services (CTS). We affirm.

¶ 3 I. Background

¶ 4 On October 6, 2015, the claimant filed an application for adjustment of claim pursuant to the Act seeking benefits for injuries he allegedly sustained to his right shoulder and person-as-a-whole on September 23, 2015, while working for CTS at the Phillips 66 Wood River Refinery in Wood River, Illinois. The application, signed by the claimant on September 30, 2015, alleged that he fell off of a scaffold "when pushed by a load" at the refinery. The following factual recitation was taken from the evidence adduced at the arbitration hearing on March 16, 2016.

¶ 5 A. The Claimant

¶ 6 The claimant testified to the following. At the time of the hearing, he was 44 years old, unemployed, and living with his fiancée, Carrie Fisher, in Louisiana. Prior to the events giving rise to this claim, Phillips 66 had hired CTS to disassemble and assemble refinery parts as part of a maintenance project at the Wood River Refinery. Grant Dalton, a safety coordinator for CTS, was assigned to lead the hiring process and safety training. CTS hired several union boilermakers from Louisiana, including the claimant, Don Schexnider, and Chris Chandler, as well as Jacob Rucker to operate the crane. All employees completed a safety orientation course and test before working on the project, per CTS and Phillips 66 requirements. According to the claimant, he was advised at orientation to report "any injury no matter how big or small" because "[t]hey were really strict on safety policies and safety procedures."

¶ 7 After orientation, the claimant, Chandler, and Rucker worked the night shift, specifically from 5 p.m. to 7 a.m., with a small crew supervised by Schexnider. The claimant was required to lift up to 50 pounds for half of the day and stand for 90% of the day while he installed, uninstalled, and

pulled refinery equipment. The claimant testified that he had no prior issues with his neck, back, or shoulder, and he was not working under any restrictions before the incident.

¶ 8 The claimant next addressed the events giving rise to this claim. On September 23, 2015, the night crew was working on exchangers under Schexnider's supervision. The work involved three separate pieces of equipment—a metal tube, a bundle, and a channel head. The channel head had two four-foot or five-foot flanges, with each flange having 75 to 80 holes for bolts. In attempting to explain the work process in layman's terms, the claimant analogized the three pieces of equipment to a pencil holder, pencil, and cap. Similar to a pencil sliding into a pencil holder, the bundle slid into the metal tube, and similar to placing a cap on the pencil holder, the channel head bolted to the bundle and tube. The channel head, which weighed approximately 18,000 to 20,000 pounds, was transported and positioned by a crane before it was bolted. Two workers stood on either side of the channel head as it was positioned by the crane. The specific job assigned to the claimant was "to match the holes up with the bundle going into the channel head and to bolt the channel head ***."

¶ 9 The claimant provided the following account of his alleged September 23, 2015, work injury. The claimant and another worker, Richard, had successfully installed several channel heads prior to his injury. When the crane operator was positioning the channel heads, the claimant and Richard stood on opposite sides of a 10-foot-high scaffold wearing safety harnesses attached to the scaffold's handrails. Only Richard had a view of the crane operator. The claimant explained that his injury occurred when one channel head came in at an angle and nearly hit him before colliding with the handrail. The claimant testified that, as the channel head quickly came towards him, he started to push against the channel head but the crane was pushing against it. Due to the weight of the channel head, the claimant was forced to duck his neck before the channel head hit the handrail. As a result, the claimant fell from a standing position onto the scaffolding.

¶ 10 Following the incident, the claimant finished bolting the channel head, although he immediately felt pain and suspected a pulled muscle. He specifically noticed pain after he came down from the scaffolding and began walking. The claimant believed he needed medical attention, so he immediately reported the accident to Schexnider. However, Schexnider advised the claimant that he could not leave the work area to report the accident to CTS because they would get fired. The claimant later told another crew member, Colby Newman, and his union steward, Aaron, of his injury. The claimant continued to work full-duty for several days with increasing pain. The pain became so severe that on either September 24, 2015, or September 25, 2015, he had difficulty using his right leg at work.

¶ 11 On September 29, 2015, the claimant and Schexnider had a disagreement while riding in a truck to an assigned work area. Chandler was riding in the backseat when the disagreement began, but the claimant was unsure if Chandler heard the argument. According to the claimant, the argument started after Schexnider became angry and insisted the claimant not report the injury. Once they exited the truck, the claimant and Schexnider had a confrontation that led to Schexnider firing the claimant. Chandler broke up the confrontation and told Schexnider to calm down.

¶ 12 The claimant's testimony regarding his initial medical treatment was consistent with the medical records admitted at the hearing, which demonstrated the following. On October 1, 2015, the claimant first sought medical treatment with Dr. Mark Eavenson, a chiropractor, for injuries stemming from the alleged September 23, 2015, accident. Dr. Eavenson's notes indicated that the claimant provided a consistent history of the alleged accident and complained of intense pain when he moved his arms and neck. Dr. Eavenson diagnosed the claimant with a right rotator cuff/labral tear, lumbar disc protrusion, and right lower extremity radiculitis. Dr. Eavenson recommended physical therapy and work restrictions, and ordered an MRI of the claimant's right shoulder and

lumbar spine. Following this appointment, the claimant provided Dalton with Dr. Eavenson's report, and he advised Dalton that Schexnider had interfered with his attempts to report an injury he sustained on September 23, 2015. Dalton instructed the claimant to use his group health insurance for medical treatment because did not want to file an accident report with Phillips 66. Shortly after speaking with Dalton, the claimant called several employees concerning his injury, including Stephanie Genevese, a safety representative with Phillips 66. The claimant was unable to speak with Genevese. Later that day, Dalton fired the claimant for failing to comply with company protocol. The claimant's last day of work was October 1, 2015.

¶ 13 After his initial medical appointment on October 1, 2015, the claimant continued medical treatment for his injuries. The claimant's testimony regarding his subsequent medical treatment was consistent with the medical records admitted at the hearing, which demonstrated the following. On October 7, 2015. Dr. Gornet's notes indicated that the claimant after the incident was instructed to continue working and not report the incident. Specifically, the claimant was instructed to use his own health insurance for any injuries. Based on a review of MRIs of the claimant's shoulders, cervical and lumbar spine, Dr. Gornet opined that the claimant suffered a disc injury to his lumbar spine, which correlated with the claimant's subjective complaints. The claimant started physical therapy and received injections for pain. After conservative treatment failed to relieve his symptoms, Dr. Gornet recommended an anterior lumbar fusion at L4-S1, a disc replacement at L4-L5, a discography, and an MRI spectroscopy. The claimant desired to have surgery to improve his quality of life and hunt and fish with his family.

¶ 14 On cross-examination, the claimant clarified that his initial reflex was to push against the channel head. He stated that he had to quickly duck to avoid getting "smooshed" between the handrail and the channel head. The claimant admitted that CTS required workers to report injuries to

both the supervisor and safety manager—a practice he had previously followed when he suffered a work injury in Louisiana. The claimant discussed the reporting issue with an attorney on September 30, 2015, prior to seeking medical treatment with Dr. Eavenson on October 1, 2015, following the attorney's suggestion. The claimant admitted that he advised Dalton that he experienced shoulder pain and did not mention low back pain.

¶ 15 B. Carrie Fisher

¶ 16 Carrie, the claimant's fiancée, testified to the following on behalf of the claimant. On September 27, 2015, Schexnider called her to persuade the claimant not to report his work injury. According to Carrie, Schexnider had demanded her to cook and do his laundry in exchange for the claimant's continued employment. On cross-examination, Carrie acknowledged that she did not work for CTS and did not witness the accident.

¶ 17 C. Luther Fisher

¶ 18 Luther, Carrie's brother, testified to the following on behalf of the claimant. After the accident, the claimant was unable to hunt or fish, both activities he enjoyed prior to the accident. On December 13, 2015, while camping near Schexnider and Chandler in Louisiana, Luther and the claimant heard Schexnider and Chandler call the claimant "dirty" for filing a lawsuit for an injury that never happened. In January 2016, Chandler told Luther that he had no knowledge of the claimant's injury.

¶ 19 D. Don Schexnider

¶ 20 Schexnider, a former CTS foreman, testified to the following on behalf of CTS. Schexnider and the claimant became friends in 2014. After getting the claimant a position with CTS in Illinois, Schexnider became the claimant's supervisor. On September 23, 2015, Schexnider was supervising a five or six person crew, which included the claimant, at the Phillips 66 Wood River Refinery. In

describing the installation of a channel head, Schexnider stated that employees stood to the side of the channel head with control ropes approximately 10 to 15 feet away, while the crane operator "swings" the channel head into position at a "turtle speed." While Schexnider supervised from the front line, boilermakers would crawl up on the scaffold, line up the channel head, and bolt it into place.

¶ 21 Schexnider did not witness the claimant's alleged accident. In fact, to Schexnider's knowledge, the claimant neither reported an accident on September 23, 2015, nor displayed any signs of injury after. Rather, the claimant worked full-duty under Schexnider until September 29, 2015, after an argument occurred between the two men. Schexnider claimed that the claimant became upset when he asked the claimant about his future work plans after the project with CTS ended in Illinois. Schexnider immediately documented the incident and reported it to CTS.

¶ 22 With regard to Carrie's testimony, Schexnider did not recall the specifics of their conversation on September 27, 2015, but he had called her before because he frequently socialized with her and the claimant. Schexnider first learned of the claimant's alleged injury on October 1, 2015, from Dalton, and he denied harassing the claimant at a campsite on December 13, 2015.

¶ 23 E. Chris Chandler

¶ 24 Chandler testified to the following on behalf of CTS. On September 23, 2015, Chandler worked for CTS as a boilermaker with the claimant and Schexnider. Chandler was unaware of any accident on that day. Chandler, who generally worked within eyesight of the claimant, never heard the claimant complain of difficulty performing his job duties or display any sign of pain. In describing the delivery of a channel head to a job site, Chandler stated that boilermakers stood on opposite sides of the swing radius and used control ropes to prevent the channel head, which moved at a "snail's pace," from swinging and rotating out of position. According to Chandler, someone

would have witnessed or reported an accident, because the "whole crew would have been specifically assigned to that one specific job." Because near-misses had to be reported per CTS standards, an accident involving a 20,000 pound channel head would have been reported, first, to Schexnider, then to Dalton, and then to the job superintendent. Chandler's testimony regarding the September 29, 2015, argument was consistent with Schexnider. Chandler believed that Schexnider was a safety-conscious foreman who treated all workers equally.

¶ 25 On cross-examination, Chandler admitted that it was possible for an employee to touch a channel head to help move it, and that it was possible for channel heads to move slightly in the process. Chandler acknowledged that he injured his lip and reported it to Schexnider before the incident in question. Although Schexnider asked if he wanted medical attention, Chandler declined treatment because he believed it was minor. If the injury would have required medical attention and Schexnider denied assistance, Chandler would have reported it to Dalton.

¶ 26 F. Jacob Rucker

¶ 27 Rucker testified to the following details on behalf of CTS. Rucker operated the crane on September 23, 2015. Rucker explained that the crane, which moved a channel head, operated at a "turtle" speed. During the process, the crane operator watched the load while crew members stood clear. Specifically, several crew members stood on the scaffold that touched the load, and one crew member used hand signals to assist Rucker. Rucker was unaware of an accident that occurred on September 23, 2015.

¶ 28 On cross-examination, Rucker admitted he was unable to see a person standing directly behind the channel head. He explained, however, that no one could stand behind the channel head because the channel head was bolted to other equipment in that area. Rucker acknowledged that he was unable to see the claimant from his vantage point, although it was possible the claimant was

standing on the scaffolding. On redirect examination, Rucker clarified that his view was obstructed only 10% of the time he operated the crane. When obstructed, crew members used hand signals and radio communications to assist him. On September 23, 2015, Schexnider relayed hand signals through another crew member.

¶ 29 G. Grant Dalton

¶ 30 Dalton testified to the following on behalf of CTS. As the lead safety coordinator, Dalton investigated reported work accidents. CTS had an "open door policy" in place, which meant that a safety employee was accessible to the claimant at all times prior to October 1, 2015. Dalton first learned of the claimant's September 23, 2015, work accident on October 1, 2015, when the claimant presented a doctor's note on September 23, 2015, for an injured shoulder. At that time, the claimant represented that Schexnider threatened to fire him if he filed a report, that Schexnider had previously instructed Chandler not to report an injury, and Schexnider had required Carrie to cook him meals in exchange for the claimant's continued employment. When Dalton offered to send the claimant to the company doctor for medical care, the claimant became visibly upset and left. Subsequently, Dalton investigated the claimant's allegations between 10:30 a.m. and 4 p.m. on October 1, 2015. Although Dalton did not personally interview witnesses, he relied on interviews conducted by two employees in CTS's safety department. Specifically, Dalton was confident in Schexnider's version of the events and did not feel the claimant's alleged injury had occurred, given that Schexnider had reported other injuries in the past.

¶ 31 Dalton ultimately determined that the claimant's allegations were unsupported because there were no witnesses and the claimant did not report the injury until October 1, 2015. As such, Dalton terminated the claimant for failing to timely report and false reporting. On cross-examination, Dalton admitted that Chandler's lip injury was never reported, although required by company protocol.

Dalton also admitted that Schexnider and Chandler were not terminated for failing to report an injury. On redirect, Dalton reconciled the difference between Chandler's incident and the claimant's situation. Dalton believed that the claimant's alleged accident was a significant event, whereas Chandler's incident was minor.

¶ 32 On October 1, 2015, Schexnider and Chandler provided written statements regarding the claimant's alleged injury and the September 29, 2015, altercation. First, Schexnider alleged that the claimant was unprovoked when he started "cursing and screaming at the foreman, threatening to beat his ass." Schexnider attempted to get away from the claimant, but Chandler had to step in and break up the confrontation. The claimant never mentioned an injury or looked injured while working. Instead, Schexnider believed the claimant had serious issues with authority. Next, Chandler's statement indicated that on September 29, 2015, he saw the claimant lean forward, approximately two inches from Schexnider's face, and threaten to hurt Schexnider. Although Chandler rode to work with the claimant every day, the claimant never stated that he was injured, and Chandler did not observe any injuries.

¶ 33 On May 2, 2016, the arbitrator issued a decision denying the claimant benefits for failure to prove that a work accident occurred on September 23, 2015. The claimant filed a petition for review before the Commission.

¶ 34 On February 14, 2017, the Commission issued a unanimous decision affirming and adopting the arbitrator's decision. In doing so, the Commission found that the claimant's testimony was incredible and unsupported by the record. Specifically, the Commission noted that the alleged accident was a serious event that would have likely produced witnesses. While recognizing that the claimant identified Richard as a witness, the Commission observed that the claimant did not present any witnesses to bolster his testimony regarding the specifics of the alleged accident. Rather, the

Commission noted that Chandler, Schexnider, and Rucker contradicted the claimant's testimony. The Commission also determined that the mechanism of the claimant's injury, specifically the speed at which the channel head moved, was "arguably implausible" considering the consistent testimony provided by other CTS employees.

¶ 35 Additionally, the Commission found the claimant's testimony inconsistent concerning his onset of immediate pain. Specifically, the Commission noted that the claimant performed seven days of heavy-duty work without difficulty before seeking medical treatment. The Commission observed that Chandler, Schexnider, and Dalton testified that the claimant did not display any signs of pain until October 1, 2015. Moreover, the Commission found it significant that Carrie did not testify about the claimant's condition following the accident.

¶ 36 Furthermore, the Commission found that the claimant's testimony lacked credibility where he testified that he was prevented from leaving the work area to report his injury. In particular, the Commission noted that the claimant could have reported the accident after work or on his next day off. The Commission also found the timeline of events highly significant. In particular, the Commission noted that an altercation between the claimant and Schexnider occurred on September 29, 2015, the claimant signed the application for adjustment of claim on September 30, 2015, and he sought medical attention on October 1, 2015. Despite the claimant's testimony regarding the September 29, 2015, altercation, the Commission determined that the evidence demonstrated that no accident occurred.

¶ 37 On February 22, 2017, the claimant sought judicial review of the Commission's decision in the circuit court of Madison County. On February 15, 2018, the court confirmed the Commission's decision. The claimant filed a timely notice of appeal.

¶ 38 II. Analysis

¶ 39 On appeal, the claimant asserts that the Commission's decision was against the manifest weight of the evidence in finding that he failed to prove a September 23, 2015, work accident. Specifically, he maintains that the medical records and his testimony, coupled with the testimonies of other witnesses, clearly established a work-related accident. We disagree.

¶ 40 To obtain compensation under the Act, a claimant bears the burden of showing by a preponderance of the evidence that he has suffered an accidental injury that "arose out of" and "in the course of" his employment. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). Whether a claimant suffered a work-related accident is a question of fact for the Commission to determine. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 538 (2007). It is within the exclusive purview of the Commission to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine the weight to be given to evidence, and resolve conflicts arising from the evidence. *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC, ¶ 38. A factual finding by the Commission will not be set aside unless it is against the manifest weight of the evidence. *Weyer v. Illinois Workers' Compensation Comm'n*, 387 Ill. App. 3d 297, 310 (2008). A finding of fact is against the manifest weight of the evidence when the opposite conclusion is clearly apparent. *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 434-35 (2011). The appropriate test is whether the record contains sufficient evidence to support the Commission's decision, not whether this court might have reached the same conclusion. *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013 (2011).

¶ 41 Applying these standards, we cannot say that the Commission's decision is against the manifest weight of the evidence. While the claimant maintains that he credibly testified that he

suffered a work-related accident on September 23, 2015, the Commission, in affirming and adopting the arbitrator's decision, discounted his testimony for several reasons.

¶ 42 First, the Commission found that, had the accident involving a 20,000-pound load actually happened, it would have been witnessed by other employees. Moreover, the claimant did not call Richard, a witness he claimed saw the accident, to testify to support his version of the events. Additionally, Rucker, the crane operator, had no knowledge of the claimant's alleged accident, and Schexnider testified that he watched his crew members on September 23, 2015, and never witnessed an accident or injury. Lastly, although Chandler testified he worked within eyesight of the claimant, he never observed an injury or accident on September 23, 2015.

¶ 43 Second, the Commission discounted the claimant's assertion that the channel head moved quickly at an awkward angle. While recognizing that boilermakers do push against the load with force when a channel head is stationary, the Commission noted that Chandler, Schexnider, and Rucker consistently testified that a channel head moves very slowly while boilermakers stand to the side. Consequently, the Commission found the claimant's testimony concerning the mechanism of injury "arguably implausible."

¶ 44 Third, the Commission found the claimant's testimony incredible that he experienced immediate, intense pain following the incident. The Commission noted that, despite his alleged pain, the claimant continued performing full, heavy-duty work for seven days before he sought medical treatment. Additionally, the Commission found it significant that the claimant did not present testimony to establish that he experienced pain or had difficulty performing his job duties, whereas Chandler, Schexnider, and Dalton testified that the claimant did not display any pain in the days following the alleged accident.

¶ 45 Fourth, the Commission found the claimant's assertion implausible where he stated that Schexnider prevented him from leaving the worksite to report the injury and seek medical treatment. The Commission concluded that the claimant had ample opportunity to report the injury prior to October 1, 2015, specifically, during the daytime, since he worked nights, and on a scheduled day off prior to October 1, 2015. Moreover, the Commission found the timing of the altercation between the claimant and Schexnider highly significant, noting that the altercation occurred on September 29, 2015, the claimant signed his application for adjustment of claim on September 30, 2015, and he then reported the alleged accident to Dalton after seeking medical treatment on October 1, 2015.

¶ 46 After reviewing the record, we find ample support for the Commission's findings. Although conflicting evidence was presented on the issue, the Commission reasonably determined that the claimant failed to meet his burden of proof where there was a lack of corroborating evidence to support his testimony. Thus, we cannot say that the Commission's finding was against the manifest weight of the evidence.

¶ 47 III. Conclusion

¶ 48 For the foregoing reasons, we affirm the judgment of the circuit court of Madison County confirming the Commission's decision.

¶ 49 Affirmed.