2019 IL App (1st) 171566WC-U

Order filed: March 22, 2019

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMISSION DIVISION

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| MICHAEL NEUBAUER, | ) | Appeal from |
| | ) | the Circuit Court of |
| Plaintiff-Appellant, | ) | Cook County, Illinois. |
| | ) | |
| v. | ) | 16-L-050637 |
| | ) | |
| THE ILLINOIS WORKERS' COMPENSATION COMMISSION and ORLAND FIRE PROTECTION DISTRICT, | ) | |
| | ) | Honorable |
| | ) | Carl Anthony Walker, |
| Defendants-Appellees. | ) | Judge, Presiding. |

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

**ORDER**

¶ 1 *Held*: We affirmed the circuit court's order which confirmed the Commission's decision denying the claimant prospective medical benefits under the Workers' Compensation Act where the Commission's finding that the claimant failed to prove a causal connection between the current condition of ill-being in his right knee and his alleged work accident was not against the manifest weight of the evidence.

¶ 2 The claimant, Michael Neubauer, appeals from an order of the circuit court of Cook County which confirmed a decision of the Illinois Workers' Compensation Commission

(Commission) denying him benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2012)) by reason of the claimant's failure to prove both that he suffered an accidental injury which arose out of his employment with the respondent, Orland Fire Protection District, and that his current condition of ill-being is causally related to his alleged work accident. We affirm.

¶ 3 I. Background

¶ 4 The claimant filed an application for adjustment of claim pursuant to the Act (820 ILCS 305/1 *et seq*. (West 2012)), seeking benefits for an injury he allegedly sustained to his right knee while participating in a training session at the respondent's training facility on August 6, 2014. The claimant subsequently filed a petition pursuant to section 8(a) of the Act (820 ILCS 305/8(a) (West 2012)), seeking an order requiring that the respondent authorize a knee surgery recommended by the claimant's treating physician, Dr. Sherwin Ho (Dr. Ho). Both parties submitted a request for hearing form, titled "8(a)," which indicated the issues in dispute were (1) accident, (2) causal connection and (3) prospective medical care. The form indicated that the parties agreed the respondent was not liable for any unpaid medical bills, but the respondent further claimed that it had paid all reasonable and necessary medical expenses and that the claimant had reached maximum medical improvement (MMI) on March 13, 2015. The form also provided that the claimant was not claiming, and the respondent had not paid, temporary total disability or temporary permanent disability benefits.

¶ 5 The matter proceeded to an arbitration hearing before arbitrator Kurt Carlson on November 6, 2015. Before taking any evidence, the arbitrator clarified that, pursuant to the request for hearing form, the hearing would proceed under section 8(a) of the Act and that the issues in dispute were (1) accident, (2) causal connection, (3) medical expenses for the period

after March 13, 2015, and (4) prospective medical care. The parties agreed and the matter proceeded "pursuant to [s]ections 19(b) and 8(a) of the Act with the claimant seeking an award for payment of prospective medical expenses." The following factual recitation is taken from the evidence adduced at the arbitration hearing.

¶ 6 The claimant testified that he was employed by the respondent, as both a firefighter and paramedic, at the time of the hearing and had been so employed for the past three years. The claimant's dual role encompassed a wide range of job duties, including heavy lifting and performing cardiopulmonary resuscitation (CPR) in emergency situations. On August 6, 2014, the claimant reported to the respondent's training facility during regular working hours for a 45 to 60 minute Emergency Medical Services (EMS) simulation training session where the claimant, along with other employees, participated in training exercises that required the performance of CPR on victims in "full arrest." While performing a training exercise, the claimant held a crouched "catcher's" position for approximately 15 to 30 minutes while alternating between performing CPR and starting an IV on a "victim" lying on the floor. As the claimant stood up from holding the crouched position, he felt a popping sensation and a sharp pain in his right knee. Although the claimant initially refused treatment and completed the training exercise, he was evaluated by South Cook County EMS, per company protocol, at approximately 3:45 p.m.

¶ 7 At approximately 4:00 p.m., he reported to Palos Community Hospital Primary Care Center (Palos) for further evaluation and treatment at the respondent's request. The medical records from Palos showed the claimant complained of right knee pain and reported feeling a popping sensation in his knee when he stood up from squatting for approximately 15 minutes. A clinical examination of the claimant's right knee indicated a full range of motion with no

swelling, edema or tenderness. X-rays of his right knee revealed no signs of fracture, dislocation or subluxation. The claimant was diagnosed with a right knee strain, instructed to schedule a follow-up appointment with his primary care physician and released to work without restrictions.

¶ 8 The claimant testified that he continued working full-duty after his initial examination at Palos. He attempted to schedule a follow-up appointment with his primary care physician but was directed to an occupational clinic after describing his injury as work-related. His primary care physician recommended Working Well-Franciscan Hammond Clinic (Clinic), as it was closer to the claimant's residence in Indiana. The claimant subsequently scheduled a follow-up appointment at the Clinic.

¶ 9 The medical records from the Clinic showed the claimant was seen by Dr. Patricia Young (Dr. Young) on December 11, 2014. The claimant informed Dr. Young his right knee pain began with a "dagger-like" sensation on August 6, 2014, which occurred as he stood up from holding a crouched position for approximately 30 minutes during a training exercise at work. He complained of ongoing weakness and mild, intermittent pain in his right knee, which he rated as 3/10. After Dr. Young's clinical examination of the claimant's right knee revealed no visible abnormalities, she ordered an MRI, diagnosed the claimant with a right knee sprain "currently appearing controlled" and released him to work without restrictions.

¶ 10 The medical records showed the claimant went to St. Margaret Mercy North for an MRI scan of his right knee on January 31, 2015. The reviewing physician opined that the scan appeared normal with no signs of a torn meniscus but noted findings consistent with low grade chondromalacia of the patellofemoral joint.

¶ 11 The medical records from the Clinic showed the claimant was next seen by Dr. Young on March 13, 2015. The claimant indicated he had recently tweaked his right knee while skiing. The

claimant reported stiffness and intermittent pain in his right knee, which he rated as 10/10. Dr. Young noted that the MRI scans appeared normal, and that her clinical examination of the claimant's right knee revealed no abnormalities. Dr. Young discharged the claimant from care at MMI with a 0% permanent partial impairment rating and released him to work without restrictions.

¶ 12 The claimant testified that he worked full-duty from August 6, 2014, to the date of the arbitration hearing but claimed that he was unable to play basketball after August 6, 2014. He had no problems with his right knee prior to the training exercise and did not suffer any additional injuries to his right knee. While the claimant acknowledged he went on two downhill skiing trips between December 2014 and March 2015, the exact dates of the skiing trips are not indicated in the record. The claimant recalled that he first went on a three-day skiing trip to Breckenridge, Colorado, where he skied approximately four hours each day on intermediate slopes, and that he subsequently went on a five-day skiing trip to Boyne, Michigan, where he skied for only one day. While the claimant admitted he informed Dr. Young he had tweaked his knee while skiing at the March 13, 2015, appointment, he claimed that the frequency of his right knee pain remained unchanged since August 6, 2014.

¶ 13 The medical records showed the claimant was next seen by Dr. Ho at the University of Chicago Medicine Orthopedic Surgery & Rehabilitation Medicine Department on April 20, 2015. The medical records indicated that a family friend referred the claimant to Dr. Ho. The claimant advised Dr. Ho that he injured his knee on August 6, 2014, as he arose from holding a crouched position during a training exercise at work. The claimant reported recurrent symptoms, particularly when squatting for prolonged periods of time. The claimant also reported increased symptoms in the preceding two to three months, and that he occasionally experienced a painful

"catching" sensation in his right knee. Dr. Ho noted that the claimant had continued to work full-time and to live an active lifestyle, which included playing basketball, biking and skiing. There was no indication in the medical records that the claimant informed Dr. Ho he had tweaked his knee while skiing. Dr. Ho's clinical examination revealed tenderness to palpitation along the lateral joint line of the claimant's right knee, along with a slight decrease in range of motion as compared to his left knee. Dr. Ho noted that the claimant described "mechanical symptoms" and that the MRI scan indicated possible chondral damage on the lateral side of his right knee. Dr. Ho ultimately diagnosed the claimant with a hypermobile lateral meniscus and recommended a diagnostic arthroscopy of his right knee. Dr. Ho released the claimant to work without restrictions while he awaited authorization for surgery.

¶ 14 In a narrative report, dated September 14, 2015, Dr. Ho diagnosed the claimant's current condition as "right knee pain with possible hypermobile meniscal tear." Dr. Ho opined that the claimant's current condition of ill-being resulted from the squatting activity that the claimant had described on April 20, 2015. Dr. Ho also opined that the recommended surgery was reasonable and necessary to explore the claimant's right knee condition and to make any necessary repairs.

¶ 15 The claimant testified that he was last seen by Dr. Ho on April 20, 2015. He had not participated in physical therapy, received injections or received any other conservative treatment for his right knee. While certain movements and activities increased his symptoms, the claimant generally did not experience day-to-day issues with his right knee.

¶ 16 Dr. Joseph Monaco (Dr. Manaco) performed a section 12 independent medical examination (IME) at the respondent's request on May 21, 2015. After performing a clinical examination and reviewing the claimant's medical records, Dr. Monaco prepared a report setting forth his findings and opinions regarding the claimant's right knee condition. During the

examination, the claimant provided a consistent history of treatment and advised Dr. Monaco that his symptoms intermittently worsened after certain activities. While the claimant was generally doing "okay," he explained that sudden flexion of his right knee caused pain. Dr. Monaco noted that the onset of the claimant's condition was a sharp pain in his right knee, which lasted three to five seconds and occurred when the claimant stood up from holding a squatted position for approximately 40 to 45 minutes during a training session at work. Dr. Monaco also noted that the claimant occasionally skied and played basketball following the incident.

¶ 17 Dr. Monaco's examination of the claimant's right knee revealed full range of motion, negative drawer signs and no signs of joint line tenderness or effusion. Based on his review of the claimant's MRI scans, Dr. Monaco opined that the claimant's articular cartilage was in good condition and that his anterior and posterior cruciate ligaments appeared normal. Dr. Monaco found no evidence of bony edema, bruising, meniscal tear or suspicions for a discoid meniscus. Dr. Monaco noted that his findings were similar to that of Dr. Young, as indicated in the medical records from the Clinic. Dr. Monaco disagreed with Dr. Ho's findings regarding articular cartilage changes in the claimant's right knee.

¶ 18 Dr. Monaco opined that the claimant may have strained his right knee on August 6, 2014, but the condition had resolved by December 2014. Dr. Monaco further opined that the claimant had reached MMI for his right knee strain by March 2015, and that no further treatment for that condition was necessary. While Dr. Monaco agreed that the claimant's current symptoms were suggestive of an internal derangement in his right knee, Dr. Monaco was unable to relate this condition to the claimant's act of squatting on one occasion "no matter how long [he] was squatting." Dr. Monaco noted that, since the August 6, 2014, incident, the claimant had been participating occupational and non-occupational activities involving a more strenuous use of his

right knee than arising from a squatted position. Although Dr. Monaco agreed that the claimant may benefit from Dr. Ho's recommended surgery, Dr. Monaco concluded that the claimant's need for the surgery was unrelated to the August 6, 2014, incident.

¶ 19 On February 3, 2016, the arbitrator issued a decision denying the claimant benefits under the Act, finding that the claimant failed to prove both that he sustained an accidental injury which arose out of his employment with the respondent on August 6, 2014, and that his current condition of ill-being is causally related to his alleged work injury. Specifically, the arbitrator found the claimed injury did not arise out of the claimant's employment because "there is nothing specific about the employment activities of the [claimant] that seem to have placed him at a greater risk than the general public for an injury to his right knee." With regard to causal connection, the arbitrator found that all of the treating medical records, with the exception of those from Dr. Ho's office, established the claimant sustained a right knee strain, or sprain, on August 6, 2014, which had fully resolved by December 11, 2014. The arbitrator also found that the claimant's knee condition "became materially worse after downhill skiing," and that Dr. Ho, who was the only doctor to make positive clinical examination findings, examined the claimant on only one occasion after the claimant had gone on two downhill skiing trips. In addition, the arbitrator found there was insufficient evidence to support a finding of causal connection between the claimant's current condition, as diagnosed by Dr. Ho, and the knee strain he sustained on August 6, 2014. Accordingly, the arbitrator determined that the claimant was not entitled to any further medical benefits, including, but not limited to, the prospective surgery that Dr. Ho recommended.

¶ 20 The claimant sought review of the arbitrator's decision before the Commission. On August 30, 2016, the Commission issued a unanimous decision affirming and adopting the arbitrator's decision.

¶ 21 The claimant filed a petition for judicial review of the Commission's decision in the circuit court of Cook County. On June 1, 2017, the circuit court entered an order confirming the Commission's decision. This appeal followed.

¶ 22 II. Analysis

¶ 23 On appeal, the claimant argues that he satisfied his burden of establishing that (1) he suffered an accidental injury arising out of his employment on August 6, 2014, and (2) there is a causal connection between his current condition of ill-being and his alleged work accident. Thus, he argues that the Commission's findings to the contrary are against the manifest weight of the evidence, and that the Commission erred by denying him prospective medical benefits. Because the issue is dispositive, we begin by addressing the Commission's finding that the claimant failed to establish a causal connection.

¶ 24 In a workers' compensation case, the claimant bears the burden of proving, by a preponderance of the evidence, all of the elements of his claim. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980). Among other things, the claimant must establish a causal connection between the employment and the injury for which he or she seeks benefits. *Boyd Electric v. Dee,* 356 Ill. App. 3d 851, 860 (2005). While every natural consequence that flows from an injury arising out of and in the course of a claimant's employment is compensable under the Act, the occurrence of an independent intervening accident may break the chain of causation between the work-related injury and an ensuing disability or injury. *Nat'l Freight Indus. v. Illinois Workers' Comp. Comm'n*, 2013 IL App (5th) 120043WC, ¶ 26 (citing *Vogel v. Industrial Comm'n*, 354 Ill.

App. 3d 780, 786 (2005); *Teska v. Industrial Comm'n*, 266 Ill. App. 3d 740, 742 (1994)). "Under an independent intervening cause analysis, compensability for an ultimate injury or disability is based upon a finding that the employee's condition was caused by an event that would not have occurred 'but for' the original injury." *Nat'l Freight Indus.*, 2013 IL App (5th) 120043WC, ¶ 26 (citing *International Harvester Co. v. Industrial Comm'n*, 46 Ill. 2d 238, 245 (1970)). "Whether a causal connection exists between the employee's condition of ill-being and a particular work-related accident is a question of fact." *Nat'l Freight Indus.*, 2013 IL App (5th) 120043WC, ¶ 26 (citing *Vogel*, 354 Ill. App. 3d at 786)).

¶ 25 It is within the province of the Commission to resolve disputed questions of fact, to draw permissible inferences from the evidence and to judge the credibility of the witnesses. *Mendota Township High School v. Industrial Comm'n,* 243 Ill. App. 3d 834, 836 (1993); *Zion-Benton Township High School District 126 v. Industrial Comm'n,* 242 Ill. App. 3d 109, 113 (1993). A reviewing court "cannot reject or disregard permissible inferences drawn by the Commission simply because different or conflicting inferences might also reasonably be drawn from the same facts, nor can we substitute our judgment for that of the Commission on such matters unless its findings are contrary to the manifest weight of the evidence." *Zion-Benton Township High School District 126,* 242 Ill. App. 3d at 113. In order for a finding to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Mendota Township High School,* 243 Ill. App. 3d at 837. A reviewing court will affirm a decision of the Commission if there is any basis in the record to do so, regardless of whether the Commission's reasoning is correct or sound. *Freeman United Coal Mining Co. v. Industrial Comm'n*, 283 Ill. App. 3d. 785, 793 (1996).

¶ 26 Here, the Commission, in affirming and adopting the arbitrator's decision, determined that the claimant sustained a right knee strain on August 6, 2014, which had "fully resolved at the time of the initial examination by Dr. Young on December 11, 2014." The Commission also determined that the claimant suffered a materially worse knee condition after downhill skiing, and that the evidence was insufficient to support a finding of a causal connection between his current knee condition and his alleged work accident.

¶ 27 After reviewing the record, we cannot say that the Commission's finding on the issue of causal connection is against the manifest weight of the evidence. The claimant initially refused medical treatment after the August 6, 2014, incident and completed the remainder of his scheduled shift, including the training exercises, before reporting to Palos for treatment at the request of the respondent. The medical records from the claimant's August 6, 2014, visit at Palos show he was diagnosed with a right knee strain after a clinical examination and x-rays of his knee failed to reveal any abnormalities. The claimant was released to work without restrictions, and he continued working full-duty until he was seen by Dr. Young on December 11, 2014. On that date, Dr. Young diagnosed the claimant with a right knee sprain "appearing controlled." Dr. Young noted the claimant complained of mild, intermittent knee pain and ordered an MRI to confirm her diagnosis, but she released the claimant to work without restrictions. The claimant continued working full-duty without missing any work as a result of his knee injury.

¶ 28 Although he was unable to recall the specific dates, the claimant admitted that he had participated in two downhill skiing trips between December 2014 and April 2015. On January 31, 2015, the claimant had an MRI scan of his right knee, which revealed possible signs of cartilage damage but no signs of a torn meniscus. The claimant was not seen for a follow-up appointment with Dr. Young until March 13, 2015. On that date, Dr. Young noted that the MRI

scans of the claimant's right knee appeared normal, confirmed her previous diagnosis of a right knee sprain and released the claimant at MMI without work restrictions. Dr. Young also noted that the claimant had recently tweaked his right knee while skiing. The medical records show the claimant's right knee was next examined by Dr. Ho on April 20, 2015, following both skiing trips. On that date, the claimant informed Dr. Ho that his symptoms had increased in the preceding two to three months and that he had experienced a new "catching" pain in his right knee which caused severe pain.

¶ 29 The Commission was presented with conflicting medical opinions regarding both the extent of the injury sustained by the claimant on August 6, 2014, and the cause of the claimant's current knee condition. Based on his review of the claimant's medical records and examination of the claimant's right knee, Dr. Monaco opined that the claimant sustained a right knee strain on August 6, 2014, and that his knee strain had resolved by December 2014. Both Dr. Monaco and Dr. Ho agreed the catching sensation described by the claimant was a mechanical symptom that suggested some form of "internal derangement" in the claimant's right knee. While Dr. Monaco opined that the training exercise could have caused a knee strain, he was unable to attribute the claimant's current knee condition, a possible internal derangement, to arising from a squatted position on one occasion. In so concluding, Dr. Monaco noted that the claimant had since engaged in occupational and non-occupational activities over the course of several months, which were more strenuous on his knee than arising from a squatting position on one occasion. Accordingly, Dr. Monaco opined that, although the claimant may benefit from Dr. Ho's recommended surgery, the surgery would not be related to the August 6, 2014, incident.

¶ 30 Dr. Ho diagnosed the claimant's current condition as "right knee pain with possible hypermobile meniscal tear." Dr. Ho also provided an alternative diagnosis of a chondral injury of

the patellofemoral joint or lateral compartment of the knee. Dr. Ho noted that neither condition is well-imaged on x-ray or MRI scans, and that both conditions could have resulted from the squatting activity the claimant described at the April 20, 2015, appointment. In support of this conclusion, Dr. Ho noted that the claimant had remained symptomatic for over one year since the injury. However, there is no indication in the record that Dr. Ho was aware, or considered, that the claimant had tweaked his knee while skiing several months after the August 6, 2014, incident in formulating his medical opinions.

¶ 31 After considering the evidence, the Commission chose to credit Dr. Monaco's medical opinions and to reject Dr. Ho's conflicting opinions. Dr. Monaco's opinions are supported by the medical records, which show the claimant's right knee condition was consistently diagnosed as a right knee strain, or sprain, in the months following the training exercise. Dr. Monaco's opinions are also supported by the medical opinions of Dr. Young, who treated the claimant in the months following his August 6, 2014, knee injury. Dr. Monaco considered the claimant's medical records, including Dr. Young's notation that the claimant had tweaked his knee skiing, in formulating his opinion that the claimant's current condition, a possible internal derangement, is unrelated to the knee sprain, or strain, he sustained on August 6, 2014. In contrast, Dr. Ho's medical opinions were based on the claimant's description of the August 6, 2014, incident and the claimant's indication that he had remained symptomatic since his alleged work accident. The Commission, however, rejected the claimant's testimony that he suffered no additional injuries to his right knee and that his right knee pain remained the same after the skiing incident, determining that the claimant's "knee condition became materially worse after downhill skiing." The Commission's determination is supported by the medical records, which show an increase in the claimant's symptoms and an additional "catching" sensation in his right knee following both

skiing trips. Because the record is devoid of any indication that the claimant informed Dr. Ho that he had tweaked his knee skiing, it was reasonable for the Commission to infer that Dr. Ho failed to consider the skiing incident in formulating his opinions. It was the Commission's function to resolve the conflicting evidence, including the conflicting medical opinions (*O'Dette*, 79 Ill. 2d at 253), and we will not substitute our judgment or reweigh the evidence because a different inference could be drawn from the evidence.

¶ 32 Based upon the record before us, we conclude that the Commission's finding that the claimant failed to prove that his current knee condition is causally related to his alleged work accident is not against the manifest weight of the evidence. Having reached this conclusion, we find it unnecessary to address the claimant's arguments regarding the Commission's finding on the issue of accidental injury. See *Gen. Motors Corp. v. Indus. Comm'n*, 179 Ill. App. 3d 683, 695 (1989) (A reviewing court may affirm the Commission's decision if there is any legal basis in the record to support its decision regardless of the Commission's findings or reasoning). Because proof of a causal connection is a prerequisite to the claimant's right to compensation, we also find it unnecessary to address his argument that he is entitlement to prospective medical benefits.

¶ 33 III. Conclusion

¶ 34 For the foregoing reasons, we affirm the judgment of the circuit court of Cook County, which confirmed the Commission's decision.

¶ 35 Affirmed.