2019 IL App (1st) 181389WC-U

FILED: July 19, 2019

NO. 1-18-1389WC

IN THE APPELLATE COURT

OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

JETTON RICHARD,	)	Appeal from
Appellant,	)	Circuit Court of
	)	Cook County
v.	)	No. 17L51008
	)	
THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (USF Holland, Inc., Appellee).	)	Honorable
	)	Carl Anthony Walker,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The Commission's decision that claimant failed to prove his work-related accidental injury was the cause of his current condition of ill-being was not against the manifest weight of the evidence.

¶ 2 On November 4, 2011, claimant, Jetton Richard, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)). He sought benefits from his employer, USF Holland, Inc. (USF), claiming he aggravated his pre-existing back injury on October 22, 2011, in a work-related vehicular accident when two passenger vehicles collided with his truck. Following a hearing, the arbitrator found claimant had proved that the accidental injury he sustained arose out of and in the course of

employment. This was uncontested. The arbitrator also found claimant's current condition of ill-being was causally related to the October 2011 work-related accident. The arbitrator awarded claimant benefits under the Act. On review, the Illinois Workers' Compensation Commission (Commission) modified the arbitrator's decision, finding that any aggravation of the pre-existing injury was only temporary, claimant had since reached maximum medical improvement (MMI), and claimant's current condition of ill-being was due to degenerative changes, not the October 2011 accident. The Commission reduced claimant's awarded benefits. On judicial review, the Cook County circuit court affirmed the Commission's decision, concluding it was not against the manifest weight of the evidence. We affirm.

¶ 3 BACKGROUND

¶ 4 On October 13, 2016, the arbitration hearing was conducted. Claimant testified he had been employed at USF as a long-haul truck driver since July 1997. On October 22, 2011, on a highway in Boardman, Ohio, claimant's truck was involved in a three-vehicle accident. One vehicle hit claimant's truck on the passenger side, while the other vehicle hit his trailer on the driver's side. He said immediately following the accident, he "felt extremely bad." He said he felt burning, numbness, and tingling in his neck. He was treated in the emergency room of St. Elizabeth Boardman Health Center. After undergoing X-rays and computed tomography (CT) scans, claimant was released with a diagnosis of cervical strain and advised to stay off work until he could follow up with his physician.

¶ 5 Two days following the accident, claimant said he still felt the burning, numbness, and tingling in his neck. USF sent him to Concentra Immediate Care in Bridgeview, Illinois, where Dr. Mahavir Shridhrani also diagnosed him with a cervical and lumbar strain and restricted his activity to no lifting, pushing, or pulling more than 10 pounds. Dr. Shridhrani noted

claimant was "[u]nable to drive company vehicle."

¶ 6 Claimant followed up with his doctor, Dr. Dean G. Karahalios, a physician board-certified in neurological surgery, who had previously performed claimant's spinal surgery. In August 2006, Dr. Karahalios had performed a cervical fusion and laminectomy on claimant. As a continued follow-up from that surgery, claimant met with Dr. Karahalios on August 8, 2011, and then after the accident on November 21, 2011. According to claimant, Dr. Karahalios ordered testing and recommended a second surgery.

¶ 7 Claimant explained that he remained symptomatic and "constantly" experienced pain in his back and neck. He said, since the October 2011 accident, "things [have been] extremely worse than what it was." He said he wanted to have the second surgery as recommended by Dr. Karahalios. He was prescribed pain medication by Dr. Christine M. Villoch, a physiatrist or pain-medicine specialist. He was currently using a fentanyl patch and taking oxycodone, the doses of which had been increased in the last two years. Claimant said he returned to work on May 22, 2012.

¶ 8 Claimant presented no further witnesses but presented his medical records, medical bills, and the evidence deposition of Dr. Karahalios as exhibits.

¶ 9 A. Opinion of Dr. Karahalios

¶ 10 In his deposition, Dr. Karahalios testified as follows. He had been seeing claimant regularly since his surgery in 2006. He first saw claimant after his October 2011 accident on November 23, 2011. Dr. Karahalios said claimant reported that his symptoms were worse than he had reported during his previous appointment on August 8, 2011. After his examination, Dr. Karahalios suspected claimant had suffered a "strain injury involving his cervical lumbar spine." He recommended claimant undergo a magnetic resonance imaging (MRI) scan and restart his

physical therapy. After reviewing the MRI performed on November 23, 2011, Dr. Karahalios found claimant had a condition known as ossification of the posterior longitudinal ligament (OPLL). Based upon claimant's reported symptoms, the doctor's examination, and the MRI results, Dr. Karahalios believed claimant had "early myelopathy." Although the "clinical findings were somewhat subtle," Dr. Karahalios ordered a somatosensory evoked potential (SSEP) test in order to determine whether there was an abnormality in claimant's spinal cord.

¶ 11 In December 2011 and January 2012, claimant had several more diagnostic tests performed, including the SSEP and a myelogram. According to Dr. Karahalios, the myelogram showed claimant had acquired stenosis in both his cervical and thoracic spine. From Dr. Karahalios's review of these tests, he concluded claimant would benefit from a second surgery. He recommended a posterior cervical approach for a decompression of the spinal canal and spinal cord as well as a stabilization or a fusion procedure. According to Dr. Karahalios, this surgery was a reasonable and appropriate treatment option for claimant, as it would relieve pressure from his spinal cord and prevent further instability. Dr. Karahalios ordered claimant to remain off work.

¶ 12 In Dr. Karahalios's opinion, to a reasonable degree of medical certainty, the October 2011 accident exacerbated claimant's underlying postoperative condition and his OPLL, which he said could be a progressive problem "on its own." In other words, claimant may have required a second surgery in the future regardless but because of the accident, he was in need of the surgery now. According to the doctor, surgery was reasonable and necessary because claimant was symptomatic and myelopathic.

¶ 13 On cross-examination, Dr. Karahalios defended his opinion that claimant was myelopathic by explaining that although the diagnosis was subjective if based on the patient's

complaints of symptoms and a physician's clinical examination, the objective SSEP test confirmed the diagnosis. The doctor described claimant as historically being "very symptomatic" and therefore he was hesitant to move forward with a second surgery without the objective findings of the SSEP.

¶ 14 USF presented evidence that included the following: (1) the independent medical examination (IME) reports from Dr. Salehi dated April 17, 2012, and July 10, 2012, (2) the evidence deposition of Dr. Daniel Troy, and (3) the IME report from Dr. Troy dated June 6, 2016.

¶ 15 USF's physicians, Drs. Salehi and Troy, in general disagreed with Dr. Karahalios's opinion regarding claimant's diagnosis of myelopathy and his need for surgery.

¶ 16 B. Opinion of Dr. Salehi

¶ 17 Claimant participated in his first IME with Dr. Salehi, a physician board-certified in neurological surgery, on April 17, 2012. After Dr. Salehi's physical examination of claimant and his review of the MRIs, CTs, and X-rays taken in late 2011, he opined that claimant was not a viable candidate for a second surgery because he was not myelopathic, he had only mild stenosis caused by OPLL, and it appeared that claimant had exaggerated his symptoms. He recommended physical therapy, after which, he believed, claimant would reach maximum medical improvement. He indicated claimant could return to work on light duty. Dr. Salehi's report did not indicate that he had reviewed the results of the SSEP, thereby making the determination that claimant did not have myelopathy on his physical examination only.

¶ 18 Dr. Salehi reevaluated claimant on July 10, 2012, and noted claimant remained off work. He noted that claimant's additional course of physical therapy did not help with claimant's reported symptoms. He also noted he had reviewed the SSEP report dated January 13,

2012. His comment related to the report was as follows: "Slight prolongation of latencies between the popliteal fossa and parietal cortex which can be seen in patients with myelopathy." Nevertheless, Dr. Salehi did not change his opinion regarding surgery. He was "still of the opinion that [claimant was] not a good surgical candidate for extension of the fusion to the rest of the cervical spine for the following reasons: (1) He [was] not myelopathic regardless of the SSEP results[;] he [had] no evidence of cervical myelopathy on examination[; and] (2) [the surgery would] significantly limit his cervical range of motion essentially rendering him incapable of returning to work as a truck driver."

¶ 19 Dr. Salehi further stated claimant's "lumbar spine findings [were] minimal, yet his subjective complaints [were] significant." Claimant complained of pain, numbness, and tingling in his back and neck. Dr. Salehi believed claimant had reached maximum medical improvement.

¶ 20 C. Opinion of Dr. Troy

¶ 21 In his deposition taken on November 18, 2014, Dr. Troy, a physician board-certified in orthopedic surgery, specializing in spinal surgery, testified that he performed an IME on claimant on March 26, 2013. He prepared a report the same day. He also prepared an addendum dated November 13, 2014. Dr. Troy noted claimant's subjective complaints of pain did not correlate with claimant's demonstrated range of motion. In Dr. Troy's opinion, claimant suffered from a long history of cervical spine issues and the various problems observed in the scans and X-rays constituted degenerative problems that existed prior to the accident in October 2011. When comparing images from May 2008 to those of December 2011, Dr. Troy noted "no traumatic pathology identified."

¶ 22 On cross-examination, Dr. Troy stated claimant's SSEP was "not grossly

abnormal." He described it as "minimally abnormal." In fact, he noted only "slightly prolonged latencies" were present. In his opinion, the mild latencies, which often appeared in patients who are myelopathic, could be the result of bruising on the spinal cord from the previous surgical spot. Such bruising was seen on the MRI as well. According to Dr. Troy, Dr. Karahalios most likely meant to state that claimant was myelopathic *at the time of his surgical intervention in 2006*, in that there was pressure on his spinal cord. After surgery, though, when the spinal cord was decompressed, the pressure had been relieved. Claimant was left with chronic changes to his spinal cord, which was why bruising was evident on his spinal cord at the C5-6 level. Because this level was surgically fused, there was no motion at this level. Thus, in Dr. Troy's opinion, it would be virtually impossible to sustain bruising at this level from an accident when there was no ability for the spine to move there.

¶ 23 Dr. Troy explained that claimant was autofused from C2 to C4 and then surgically fused at C5 to C6. Since claimant was fused from C2 to C6, another surgical fusion of the C6 to C7 level was not going to make any improvement, regardless of whether the spine was fused from the front or the back. The C6 to C7 level showed no sign of herniation or stenosis. Dr. Troy stated: "Objectively, there's no objective evidence that there's any induced changes to his cervical spine from the accident." Although claimant could have had subjective complaints of pain to his cervical spine from the accident, they were not supported by the physical examination. Any opinion supporting a further fusion of claimant's cervical spine, which was already fused, would be related to a preexisting issue, not the accident. As a result, Dr. Troy indicated he would have to defer such a decision of a subsequent surgery to Dr. Karahalios as to his own justification of how surgical intervention in the form of a fusion would be beneficial to an already-fused cervical spine. Dr. Troy thought it possible that Dr. Karahalios's reason for

surgery be "pure and simply based on [claimant's] subjective complaints of discomfort." Otherwise, Dr. Troy could not surmise what a further surgical intervention would achieve.

¶ 24 Dr. Troy's IME report dated March 26, 2013, generally stated that his review of the tests, scans, images, and examinations presented demonstrated "no acute active process." He summarized his findings as follows:

> "The claimant appeared to have significant symptom magnification on examination. His complaints of pain appeared to be out of proportion to the testing that was performed. The claimant has a profound preexisting degenerative process to the cervical spine that was present prior to this motor vehicle accident."

¶ 25 In Dr. Troy's opinion, claimant did not need further surgical intervention. Because claimant had been working full duty since his 2006 surgery without issues and no acute conditions prevented him from doing so now, claimant should be capable of returning to full duty. Further, Dr. Troy opined "claimant [was] currently at maximum medical improvement in regards to his care and treatment."

¶ 26 Dr. Troy's IME report addendum dated November 13, 2014, was prepared in response to his review of additional medical records and three specific questions posed by USF's attorney. First, USF questioned whether Dr. Daniel Hurley's records dated June 11, 2013, and October 1, 2013, altered his opinion. According to Dr. Troy's summary of the records, claimant was evaluated by Dr. Hurley on June 11, 2013, after complaining of neck, shoulder, and upper back pain with numbness and tingling in his arm and fingers. Dr. Hurley suggested a trial of Nucynta (pain reliever) and cervical facet blocks (injections) if needed while claimant awaited a decision on surgery. Claimant also saw Dr. Hurley on October 1, 2013. The doctor advised claimant to find a pain specialist in Memphis where he was then residing. He also prescribed a

low dose of gabapentin (neuropathic pain medicine) and advised claimant to continue with Lortab (pain reliever) while awaiting a decision on surgery. Dr. Troy responded that the additional medical records provided did not change his opinion.

¶ 27 Second, USF asked Dr. Troy to comment on whether he agreed with Dr. Karahalios's recommendation that claimant undergo a C2 to C7 decompression and fusion and whether such recommendation was reasonable, necessary, and causally related to the October 2011 accident. Dr. Troy noted that claimant's radiographs showed that claimant was already fused from levels C2 to C6. He was unable to discern from the scans produced whether claimant was fused at the C7 level. Nevertheless, in his opinion, any potential need for surgical intervention should be deferred to Dr. Karahalios. Dr. Troy thought it was possible that claimant needed a second surgery to treat potential facet arthropathy, a degenerative arthritis of the spine. However, any need for surgery, in his opinion, was not causally related to the October 2011 accident.

¶ 28 Third, USF asked Dr. Troy to comment on whether he believed claimant had reached maximum medical improvement on the date of his examination on March 26, 2013. According to Dr. Troy, there was no objective evidence found during his physical examination of claimant or upon his review of the records that would prevent claimant from returning to work. Dr. Troy stated he agreed with Dr. Salehi's findings that claimant demonstrated a significant number of Waddell factors, suggesting that claimant was exaggerating his symptoms.

¶ 29 Dr. Troy performed a subsequent IME on June 6, 2016, and prepared a report dated the same day. The doctor noted claimant appeared with "significantly greater shoulder symptomatology" than in March 2013. Dr. Troy believed claimant's shoulder pain was due to the natural progression of degenerative changes of his cervical spine. An MRI performed on

February 26, 2016, supported his belief that the noted changes to his spine were degenerative, not acute or traumatic in nature. Dr. Troy opined that the findings on the latest MRI were "not causally connected to the October of 2011 accident. They [were] secondary to the natural process of degenerative changes of the cervical spine that occur[ed] over time." Dr. Troy explained that "claimant may benefit from a C6-7 fusion to assist with some of his posterior neck pain, which [was also] secondary to the natural degenerative process that occur[ed]over time." Any surgical intervention proposed by Dr. Karahalios "[was] not causally connected to the October 22, 2011, motor vehicle accident." Dr. Troy further noted that claimant's increased complaints of pain in his shoulders and posterior neck area were also caused by the natural degenerative processes of the cervical spine.

¶ 30 After considering the evidence, the arbitrator ordered USF to (1) authorize the surgery, (2) pay claimant $1026.77 per week in temporary total disability (TTD) benefits for 259 weeks (from October 25, 2011, through October 13, 2016), (3) pay $10,984.56 in unpaid medical bills, and (4) pay prospective medical expenses.

¶ 31 On November 9, 2017, the Commission modified the arbitrator's decision, finding claimant reached maximum medical improvement on July 10, 2012 (the date of Dr. Salehi's second IME), after a temporary aggravation of his preexisting cervical condition from the work-related October 22, 2011, motor vehicle accident. The Commission ordered USF to pay medical expenses incurred from October 22, 2011, through July 10, 2012, and TTD benefits for 36 5/7 weeks (from October 25, 2011, through May 21, 2012, and May 24, 2012, through July 10, 2012). The Commission denied any prospective medical expenses. On June 13, 2018, the circuit court of Cook County confirmed the Commission's decision.

¶ 32 II. ANALYSIS

¶ 33 Before addressing the claims of error raised by claimant in this appeal, we find it necessary to admonish claimant for his failure to comply with the requirements for briefs filed with this court. Illinois Supreme Court Rule 341(h)(9) (eff. Nov. 1, 2017) requires that an appellant's brief contain an appendix as required by Rule 342. Illinois Supreme Court Rule 342 (eff. July 1, 2017) requires that the appendix to an appellant's brief include the decisions of the arbitrator and the Commission. Claimant included neither.

¶ 34 Supreme Court rules "are not mere suggestions[;]" rather, they are rules which have the force of law and should be followed as written. *People v. Glasper*, 234 Ill. 2d 173, 189 (2009). This court has the discretion to strike an appellant's brief and dismiss the appeal for failure to comply with the rules. *McCann v. Dart*, 2015 IL App (1st) 141291, ¶ 12. We elect not to do so here as USF provided this court with the citations to the record for the respective decisions of the arbitrator and the Commission.

¶ 35 In this appeal, claimant argues the Commission erred in finding he failed to prove his current condition of ill-being was caused by his work-related accident on October 22, 2011. He maintains the accident aggravated his preexisting condition to the extent that he required a second back surgery and off-work restrictions.

¶ 36 "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc., v. Industrial Comm'n*, 207 Ill. 2d 193, 203 (2003). "The 'arising out of' component is primarily concerned with causal connection" and is satisfied if the claimant shows "the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Id.*

¶ 37 The Commission had before it contradictory medical testimony regarding whether claimant suffered traumatic injury from the accident so as to require a second surgery. Claimant insists, relying on Dr. Karahalios's opinion, that the accident caused further damage to his back, requiring decompression and fusion surgery to repair his spine. On the other hand, Drs. Salehi and Troy opined claimant's current condition of ill-being was a natural degenerative progression related to his pre-existing back issues. Neither of these doctors found any evidence of an acute or traumatic condition that could be attributed to the October 2011 accident.

¶ 38 Soon after claimant's accident, Dr. Karahalios, a neurosurgeon, ordered several diagnostic tests, and after his review of the same, he diagnosed claimant with OPLL, early myelopathy, and cervical/thoracic stenosis. He believed claimant would benefit from a second surgery, a treatment that he described as reasonable and appropriate. He recommended a posterior cervical fusion and surgical decompression. He ordered claimant off work. When asked what role the accident played in claimant's current condition, Dr. Karahalios said claimant may have needed a second surgery sometime in the future regardless but, because of the accident, he needed that surgery now. This opinion was based on claimant's reported symptoms and evidence of myelopathy. Dr. Karahalios admitted claimant was historically "very symptomatic," which caused him pause in proceeding with a surgicial procedure without objective test results.

¶ 39 USF sent claimant to two physicians who performed four IME's on claimant between April 2012 and June 2016. Dr. Salehi, a neurosurgeon, evaluated claimant twice. Based on his examination and his review of the diagnostic tests, Dr. Salehi was of the opinion that claimant (1) was not myelopathic, (2) had only mild stenosis caused by his OPLL, and (3) was exaggerating his symptoms. In his opinion, claimant was not a candidate for a second surgery. After Dr. Salehi's examinations, Dr. Troy, an orthopedic surgeon, examined claimant. In Dr.

Troy's opinion, claimant was exaggerating his symptoms, as his complaints did not correlate with the doctor's findings during the physical examination. After Dr. Troy's review of the diagnostic tests, he acknowledged claimant had a long history of back issues. He said all of claimant's conditions that were apparent in the scans and tests were degenerative in nature. He noted no traumatic pathology, as the conditions all existed prior to the October 2011 accident.

¶ 40 In his argument on appeal, claimant relies heavily on Dr. Troy's suggestion that he would defer the need for a second surgery to claimant's treating physician, Dr. Karahalios. According to Dr. Troy's testimony from his evidence deposition and his IME reports, he believed claimant did not require surgery *as a result of the 2011 accident*. He explained that *if his treating physician believed claimant needed further surgery*, it may be because claimant has experienced degenerative changes to his spine, not because of an acute condition or trauma.

¶ 41 This case involved a classic battle of the experts, making the only issue before us one that relies on the manifest-weight-of-the-evidence standard. In *Dexheimer v. Industrial Comm'n*, 202 Ill. App. 3d 437, 442-43 (1990), the court stated:

> "It is the province of the Commission to weigh and resolve conflicts in testimony, including medical testimony, and to choose among conflicting inferences therefrom. [Citations.] It is only when the decision of the Commission is without substantial foundation in the evidence or its finding is manifestly against the weight of the evidence that the findings of the Commission should be set aside."

(See also *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980)). A reviewing court cannot reject or disregard permissible inferences drawn by the Commission because different or conflicting inferences may also be drawn from the same facts, nor can it substitute its judgment

for that of the Commission unless the Commission's findings are against the manifest weight of the evidence. *Martin v. Industrial Comm'n*, 227 Ill. App. 3d 217, 219 (1992). For a factual finding to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 539 (2007). "The test is not whether this or any other tribunal might reach an opposite conclusion but whether there is sufficient factual evidence in the record to support the Commission's determination." *Navistar International Transportation Corp. v. Industrial Comm'n*, 331 Ill. App. 3d 405, 415 (2002). "A reviewing court will not reweigh the evidence, or reject reasonable inferences drawn from it by the Commission, simply because other reasonable inferences could have been drawn." *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006).

¶ 42 Because it is the Commission's function to judge the credibility of witnesses, including expert witnesses, it must determine which testimony is to be accepted where there is conflicting medical testimony presented. *Martin v. Industrial Comm'n*, 91 Ill. 2d 288, 294 (1982). The Commission could reasonably have concluded that claimant's current condition of ill-being was a natural progression of degenerative issues as Drs. Salehi and Troy believed. Their respective opinions were supported by reasonable professional explanations and objective medical evidence.

¶ 43 With the above standard in mind, and after considering all the evidence, we agree with the circuit court's decision that the Commission's decision was not against the manifest weight of the evidence. There is no dispute that claimant suffered a work-related accident on October 22, 2011, in his USF truck. There is also no dispute that claimant suffered an aggravation of his preexisting back condition. The disputed issue was whether that aggravation was temporary and has since resolved, allowing claimant to return to his work duties, *or* whether

that aggravation caused a more permanent condition requiring surgical intervention. The Commission's decision accepting the former opinion, to the exclusion of the latter, was within its purview, and the opposite conclusion was not clearly apparent. See *Westin Hotel*, 372 Ill. App. 3d at 539.

¶ 44 We find claimant's reliance on *Bocian* misplaced. See *Bocian v. Industrial Comm'n*, 282 Ill. App. 3d 519 (1996). In his brief, claimant asserts the "facts are identical to the present case." We disagree. Indeed, the Commission in *Bocian* relied on the employer's doctor, as did the Commission here. However, that is where the similarity between the two cases ends. In *Bocian*, there was no battle of the experts, as the claimant's psychiatrist and the employer's psychiatrist concurred in their respective opinions of the claimant's diagnosis of major depression. See *Bocian*, 282 Ill. App. 3d at 528. The only issue was causation of the claimant's suicide. The appellate court determined that "[a]ll the evidence in the record clearly, plainly[,] and indisputably establishe[d]" that a result opposite to that of the Commission's decision was clearly apparent. *Id*. at 529.

¶ 45 Such is not the case here. In this case, the Commission determined that Drs. Salehi's and Troy's opinions were entitled to more weight than Dr. Karahalios's opposing opinion. This determination was a matter within the Commission's discretion and was sufficiently supported by the evidence.

¶ 46 III. CONCLUSION

¶ 47 For the reasons stated, we affirm the judgment of the circuit court of Cook County confirming the Commission's decision.

¶ 48 Affirmed.