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2014 IL App (2nd) 130421WC-U

Order filed July 7, 2014

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

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JASON LOFTIS,	)	Appeal from the Circuit Court
	)	of the Eighteenth Judicial Circuit,
	)	Du Page County, Illinois
Appellant,	)	
	)	
v.	)	Appeal No. 2-13-0421WC
	)	Circuit No. 12-MR-1849
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION <i>et al.</i> (Euro-Tech Cabinetry	)	Honorable
and Remodeling, Inc., Appellees).	)	Bonnie M. Wheaton,
	)	Judge, Presiding.

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

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**ORDER**

¶ 1 *Held:* The Commission's finding that the claimant's current condition of ill-being was not causally related to an industrial accident on November 23, 2010, was not against the manifest weight of the evidence.

¶ 2 The claimant, Jason Loftis, filed a claim against Euro-Tech Cabinetry & Remodeling, Inc. (the employer) under the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)) alleging injuries to his right knee and lower back arising out of and in the course of

his employment on November 23, 2010. Following a hearing held pursuant to section 19 (b-1) of the Act (820 ILCS 305/19 (b-1) (West 2008)), the arbitrator found that the claimant was involved in a work-related accident on November 23, 2010, however, the claimant had failed to establish that his current condition of ill-being was causally related to that industrial accident.

¶ 3 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission), arguing that the arbitrator erred in finding that he had failed to establish a causal connection between his current condition of ill-being and the industrial accident on November 23, 2010. The Commission unanimously affirmed and adopted the arbitrator's decision. The claimant then sought judicial review of the Commission's decision in the circuit court of Du Page County, which confirmed the Commission's ruling. In this appeal, the claimant maintains that the Commission's determination that his current condition of ill-being was not causally related to the accident on November 23, 2010, was against the manifest weight of the evidence.

¶ 4

#### **FACTS**

¶ 5 On November 23, 2010, the employer was engaged as a remodeling contractor for a homeowner in Naperville, Illinois. The project called for adding an extra room in the attic area of an existing home and installing a dormer in the roof. The claimant was one of 10 to 12 workers at this job site. The claimant testified that in order to install the dormer, it was necessary to cut a large section of the roof and elevate it. The elevation exposed the area to the elements. The claimant also testified that it rained the day prior to the accident causing the footing to be somewhat slippery. The claimant further testified that he was standing on a 10 foot ladder hanging a ceiling joist. He was being helped by a co-worker, Randy Loftis, his brother. He was

standing on the ladder, approximately two rungs from the top, holding a nail gun in one hand and the top of the joist in the other. He was leaning out from the ladder, about to engage the nail gun when the ladder slip from underneath his feet causing him to fall approximately 8 feet to the floor. The claimant testified that he struck his right knee on the floor. He immediately felt pain in the right knee as well as the lower right side of his back.

¶ 6 The claimant further testified that Randy came to his assistance and helped in into a sitting position on the floor. The claimant sat for approximately five minutes and then went to Randy's truck, where he called his sister to transport him to the emergency room. He testified that no one on site offered to take him to the hospital. The claimant informed his supervisor, Larry Rosol, of his fall and told him that he was going to the ER because he had injured his right knee and his back.

¶ 7 Randy Loftis testified that he was helping the claimant hang a ceiling joist when he saw the claimant fall 8 to 10 feet off a ladder and fall to the floor joist below. He saw the claimant's right foot go through the drywall up to his thigh. Randy helped the claimant get up and after a few minutes helped him down the stairs and out of the house. Randy further testified that he waited for their sister to take the claimant to the hospital before he returned to work.

¶ 8 Larry Rosol testified that he was approximately 12 feet away from the claimant when he saw the claimant fall from the ladder. Rosol testified that the claimant was on the second rung of the ladder when his foot missed the third rung as he was climbing the ladder. Rosol saw the claimant's right foot miss the third rung and go through the drywall beside the ladder. Rosol stated that the claimant did not "fall off the ladder" but merely "slipped" from the second rung. Rosol immediately asked the claimant if he was alright, and the claimant said that he was fine. According to Rosol, the claimant then sat down for a few minutes, and then told Rosol that he

had to leave. The claimant did not inform Rosol of any specific injury and did not ask for any medical assistance.

¶ 9 Kevin Moore testified that he was on the job site on the day in question and was assisting Rosol at the time of the accident. Moore testified that he was approximately six feet from the claimant when he saw the claimant slip on the second rung of the ladder causing him to drive his right foot through the adjacent drywall up to his thigh. Moore testified that he asked the claimant if he was alright and the claimant told him that he had previously "blown out" his right knee. According to Moore, the claimant made no mention of any pain or injury to his back. Moore testified that after a few minutes of walking around, the claimant stated that he had to go and would wait for someone to pick him up. Moore testified that the claimant did not ask him to call an ambulance and the claimant did not appear to be in any pain.

¶ 10 The claimant testified that he went to the emergency room at St. Joseph's Hospital in Joliet, Illinois. He further testified that x-rays were taken of his right knee and low back. The claimant testified that he was referred by the emergency room physician to Dr. William Ferrell, an orthopedic specialist. He also testified, however, that he contacted Dr. Ferrell's office but never made an appointment due to lack of funds or insurance coverage. No records from the emergency room treatment were offered into evidence by either party.

¶ 11 The claimant testified that he returned to the emergency room on December 3, 2010, due to continuing back pain. He further testified that after this visit he was referred to Dr. Cary Templin. No records of this second emergency room visit were offered into evidence. The first documented instance of medical treatment received by the claimant was a "progress note" written by Dr. Cary R. Templin on December 7, 2010. In that note, Dr. Templin recorded that the claimant "works as a carpenter" and that on some unspecified date "he was up on a

ladder, and the ladder slipped from the joint it was resting on, and he fell onto the joist." The note continued: "the patient was seen in the emergency room and then again about a week later was evaluated in the emergency room for continued pack pain." Dr. Templin's treatment notes also contained the following: "Currently, the patient's pain diagram shows pain up and down his back, more to the right side, aching and stabbing in nature extending from the midthoracic region down to the lower back and a numb feeling extending in the posterior aspect of the leg down to the plantar surface of the foot. \*\*\* He is ambulatory but presents today with an immobilizer on his right knee as well. He notes he has knee pain since the accident. The patient per the records of St. Joe had x-rays a couple of times over the last few years which he notes were for mild lumbar strains but nothing severe. " Dr. Templin had access to a CT scan apparently performed at one of the claimant's two emergency room visits.

¶ 12 Following his examination of the claimant, Dr. Templin diagnosed low back pain post fall with a possible herniated disc. Dr. Templin noted that the possible herniated disc at L5-S1 appeared on the CT scan. He ordered MRI to follow up on the disc and ordered the claimant off work until the MRI was completed. He also prescribed anti-inflammatory, pain, and arthritis medication. It appears that Dr. Templin also placed the claimant on a light duty restriction of lifting no more than 10 pounds and no overhead activities.

¶ 13 On December 9, 2010, the MRI was interpreted by Dr. Templin as showing degenerative changes as well as a suggestion of a mild narrowing of the neural foramina bilaterally at L5-S1 and a large protruding and extruding disc at L4-L5.

¶ 14 The claimant testified that Dr. Templin referred him to Dr. Samir Sharma at the Pain and Spine Institute in Joliet, Illinois. The claimant also testified that: (1) he was examined by Dr. Sharma approximately one week after being referred by Dr. Templin: (2) Dr. Sharma gave him

an epidural pain injection and prescribed physical therapy; and (3) he attended approximately 16 physical therapy sessions. The record contained no documentation from Dr. Sharma's initial examination or any of the physical therapy sessions.

¶ 15 The claimant testified that from January 18, 2011, to July 15, 2011, he received no medical care and was unable to work. It was subsequently established that the claimant was incarcerated during this time period.

¶ 16 On July 19, 2011, Dr. Sharma issued a report indicating that the claimant had previously presented with low back pain radiating into the right leg for which he had received an epidural injection. Dr. Sharma noted that the claimant had been incarcerated for six months prior to this visit and noted that his low back pain had increased since the last examination. Dr. Sharma diagnosed lumbar radiculopathy and low back pain. He prescribed pain medication, including another epidural injection. He initiated a referral to Dr. Mukund Komaduri, an orthopedic specialist, for evaluation of the claimant's right knee. The record indicates that the claimant never attempted to contact Dr. Komaduri.

¶ 17 On August 2, 2011, Dr. Templin again examined the claimant and recorded a treatment note that indicated continuing pain at L4-L5 and L5-S1.

¶ 18 On September 22, 2011, the claimant was examined at the request of the employer by Dr. Avi Bernstein, a board certified orthopedic surgeon. Dr. Bernstein also reviewed the available medical records. Dr. Bernstein opined that the claimant had chronic persistent complaints of low back pain but these complaints were inconsistent with the results of the MRI. He further opined that if the claimant's low back symptoms were the result of the November 23, 2010, accident, he would have been at maximum medical improvement (MMI) within six months of the accident. Therefore, Dr. Bernstein advised that no further medical treatment was necessary. He advised

that the claimant undergo a functional capacity examination (FCE) to accurately evaluate the claimant's abilities. Dr. Bernstein noted that if the claimant was in need of any further treatment, it would be only a short course of physical therapy to instruct him on the value of a home exercise program.

¶ 19 On October 25, 2011, the claimant was again examined by Dr. Templin. Examination notes generated following this appointment indicate that Dr. Templin noted little change in the claimant's condition since his last examination. He ordered an MRI to evaluate any changes in the claimant's low back. He indicated that he would withhold any surgical recommendations pending the new MRI.

¶ 20 On November 4, 2011, an MRI was performed on the claimant's low back. Dr. Templin interpreted the results as showing right protrusion at L5-S1 with mild to moderate central canal narrowing, right protrusion at L4-L4, and bulging at L1-L2, L2-L3, and L3-L4. In an "Order for Treatment" entered into evidence, Dr. Templin recommended decompression and fusion surgery.

¶ 21 A billing statement for Pain Centers of Chicago noting treatments on November 17, 2011, December 13, 2011, and March 30, 2012, were entered into evidence. However, no other documents or testimony was offered regarding these treatments.

¶ 22 The claimant testified that he had not injured his lower back or right knee since the November 23, 2010, accident. At the time of the hearing, he was unemployed and had no financial means to pay for the surgery recommended by Dr. Templin. He also testified that at the time of the hearing, Dr. Templin had not released him to return to unrestricted work. He testified that he has searched for work within the restrictions imposed by Dr. Templin but has been unable to find employment. On cross-examination, he admitted that he began his job search only in May of 2012, a few months prior to the hearing. The claimant testified that he still experienced

pain in the right knee as well as his low back. He described his pain as a 7 on a scale of 1 to 10. He testified that his treatment is limited to pain medication and he would like to complete the low back surgery recommended by Dr. Templin, but he lacked the financial ability to go forward with the treatment.

¶ 23 The arbitrator found that the claimant experienced a work-related accident on November 23, 2010, when his foot slipped off the ladder and struck his right knee on the floor joist. The arbitrator found, however, that the claimant had failed to establish that his current condition of ill-being regarding either his right knee or his low back was causally related to the November 23, 2010, accident. The arbitrator noted even though the claimant testified that his back struck the floor when he fell, none of the other occurrence witnesses testified to observing the claimant's back strike the floor. All the other witnesses, including the claimant's brother, testified that the claimant's right leg went through the dry wall above his knee. The arbitrator interpreted this testimony to establish that the claimant remained in an upright position after falling from the second rung of the ladder. The arbitrator also noted that, even though the claimant testified to immediately experiencing right knee pain after the accident, no medical records were presented regarding any diagnosis of an injury to the right knee and the claimant submitted no expert medical opinion testimony establishing a causal connection between the current condition of the claimant's right knee and the accident on November 23, 2010. Regarding the right knee, the arbitrator also noted that the record contained no documentation regarding the claimant's emergency room visits, Dr. Templin's initial examination, or Dr. Sharma's initial examination. The arbitrator observed that due to the lack of these medical records, he was forced to accept the claimant's testimony as the only evidence that the claimant initially complained of right knee pain immediately after the accident.

¶ 24 Regarding the claimant's claim that his current condition of ill-being in his low back was causally related to the November 23, 2010, accident, the arbitrator noted that there was no evidence, other than the claimant's own testimony, that he injured his low back when he fell from the ladder. The arbitrator noted that the only indication that the claimant's low back symptoms were related to the November 23, 2010, accident was a notation in Dr. Templin's report on December 7, 2010, that the claimant told Dr. Templin that he "was injured on work in November 2010." In contrast to the lack of medical evidence supporting the claimant's causal connection claim, the arbitrator gave weight to Dr. Bernstein's opinion that the claimant's current low back complaints were inconsistent with the MRI results and that even if the claimant suffered a low back injury on November 23, 2010, he would have been at MMI within 6 months of the accident. Based upon the totality of the evidence, the arbitrator found that the claimant had failed to establish that his current condition of ill-being was causally related to the November 23, 2010, accident.

¶ 25 The claimant appealed the arbitrator's decision to the Commission, which unanimously affirmed and adopted the arbitrator's award. The claimant then sought judicial review of the Commission's decision in the circuit court of Du Page County, which confirmed the Commission's ruling. The claimant then filed a timely appeal to this court.

¶ 26 **ANALYSIS**

¶ 27 On appeal, the claimant maintains that the Commission erred in finding that he failed to establish that her current condition of ill-being was causally related to his employment. Under the Act, a compensable injury is one that both "arises out of" and "in the course of" a claimant's employment. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). An injury is said to arise out of one's employment when there is a causal connection

between the employment and the injury, *i.e.*, the origin or cause of the current condition of ill-being must be attributable to some risk connected with the claimant's employment. *Id.* at 676. Whether the claimant's current condition of ill-being is causally related to his or her employment is generally a question of fact and this court will not reverse the Commission's causation determination unless it is against the manifest weight of the evidence. *R&D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 868 (2010). For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent from the record on appeal. *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297 (2009).

¶ 27 Here, the Commission's finding that the claimant failed to establish a causal connection between his current condition of ill-being and his employment was not against the manifest weight of the evidence. First, the Commission agreed with the arbitrator's conclusion that the evidence failed to establish that the claimant injured his back in the November 23, 2010, accident. The record established that only the claimant himself testified to injuring his back in the fall. The other occurrence witnesses, including the claimant's brother, testified that the claimant but his foot through the drywall when he fell and did not strike his back. Given the testimony of the occurrence witnesses, and the lack of medical records of the emergency room treatment, it cannot be said that the Commission's finding that the claimant failed to establish that he injured his back on November 23, 2010, was against the manifest weight of the evidence.

¶ 28 Similarly, the medical opinion evidence supported the Commission's finding that the claimant failed to establish a causal connection between his current low back condition and the accident. Dr. Bernstein opined that, even if the claimant injured his back on November 23, 2010, based upon the MRI and the claimant's description of the accident, the claimant would have been

at MMI within 6 months of the accident. Dr. Templin's medical causation opinion, on the other hand, relied completely on the claimant's description of the accident and his subjective complaints of pain. Where conflicting medical opinion testimony exists, the Commission is charged with weighing competing medical testimony and determining whether the medical evidence established the requisite causal connection. See *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63-64 (1982). In the instant matter, the Commission adopted the arbitrator's interpretation of the medical records regarding the claimant's low back claim and it cannot be said that its interpretation of the medical evidence was against the manifest weight of the evidence.

¶ 29 The claimant maintains that the Commission erred in not accepting his testimony regarding how the accident occurred and in giving undue credit to Dr. Bernstein's medical opinion testimony. While the Commission could have credited the claimant's testimony or discounted Dr. Bernstein's opinion, it chose not to do so. Given the critical lack of documentation which would have supported the claimant's testimony, it cannot be said that the Commission erred in weighing the evidence in the manner it did and its decision cannot be said to be against the manifest weight of the evidence.

**¶ 30 CONCLUSION**

¶ 31 For the foregoing reasons, we affirm the judgment of the circuit court of Du Page County, which confirmed the Commission's ruling that the claimant's current condition of ill-being was not causally related to his industrial accident. We remand the matter to the Commission for further proceedings regarding any additional TTD benefits and to determine the nature and extent of the claimant's permanent injuries, if any.

¶ 32 Affirmed and remanded.

