

2014 IL App (2d) 130533WC-U
No. 2-13-0533WC
Order filed June 18, 2014

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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

NAVISTAR, INC.,)	Appeal from the
)	Circuit Court
Appellant,)	of DuPage County
)	
v.)	No. 12-MR-1518
)	
ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION <i>et al.</i> (Larry McCarthy,)	Terence M. Sheen,
Appellee).)	Judge, presiding.

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

ORDER

¶ 1 *Held:* The Commission's finding of a causal relationship between the condition of ill-being in the claimant's right knee and the workplace accident is not against the manifest weight of the evidence. The Commission properly awarded medical expenses based on the parties' stipulation.

¶ 2 The claimant, Larry McCarthy, injured his right knee while working for the employer, Navistar, Inc., and filed an application for adjustment of claim under the Illinois Workers' Compensation Act (the Act), 820 ILCS 305/1 *et seq.* (West 2008). The Illinois Workers' Compensation Commission (the Commission) found that the claimant had a significant, pre-existing arthritic condition in his right knee, but the condition was asymptomatic prior to the accident. The Commission found that following the accident, the claimant suffered from severe right knee pain and that the workplace accident was a causative factor with respect to the condition of ill-being in the claimant's right knee which ultimately resulted in a total right knee replacement. The circuit court confirmed the Commission's decision. The employer appeals the circuit court's judgment and argues that the Commission's finding with respect to causation was against the manifest weight of the evidence. We affirm.

¶ 3 **BACKGROUND**

¶ 4 At the time of the arbitration hearing, the claimant was 62 years old. He began working for the employer as a facilities associate in 1997. The claimant's job duties included setting up conference rooms and audio-visual equipment. He was required to squat, bend, and lift heavy objects. On December 8, 2008, the claimant injured his right knee when he was unloading reams of paper from a cart. The axle of the folding cart hit the left side of his right knee and caused his knee to twist inward. He started to fall to the ground but caught himself on a table. He felt a burning pain following the accident. He reported the incident to his supervisor on the same day. He hoped that he could "walk it off" and continued to work for another hour before going home for the day. Prior to

December 8, 2008, the claimant had no problems with his right knee and had not suffered any previous injuries to the knee. The employer does not dispute that the workplace accident occurred.

¶ 5 The claimant sought medical treatment on December 10, 2008, at a health clinic with complaints of pain in the back of his leg and thigh following the accident. X-rays revealed a bipartite patella, but no acute fractures or dislocations. The claimant was diagnosed with a right knee contusion, given a knee brace, prescribed pain medications, and placed on light duty. The claimant testified that the pain persisted and that he was unable to walk on his right leg.

¶ 6 The claimant again sought medical treatment at the clinic on December 15, 2008, and his records from this visit indicate that his knee condition continued to get worse since December 13, 2008. The claimant complained of significant pain, and he had a painful, guarded gait. He was prescribed additional pain medications, given crutches, and restricted from work. The claimant returned to the clinic on December 17, 2008, and reported that he was still in pain.

¶ 7 On December 17, 2008, the claimant began treatment with an orthopedic surgeon, Dr. Samuel Park. In his records, Dr. Park noted the work-accident and that the claimant had developed right anterior knee pain and swelling which progressively worsened to the point where he was unable to put any weight on his right lower extremity. Dr. Park believed that the claimant may have twisted his knee subsequent to the accident. He believed that the claimant had "a medial knee injury, possible MCL sprain or a medial

meniscus tear." He prescribed Flexeril, a crutch, and range of motion exercises, and he ordered an MRI to assess for possible MCL or meniscus tear.

¶ 8 The claimant returned to Dr. Park on December 31, 2008. Dr. Park noted that the claimant's right knee demonstrated a bipartite patella, medial and lateral meniscus tears as well as medial compartment chondromalacia. He recommended right knee arthroscopic partial medial and lateral meniscectomies.

¶ 9 On January 20, 2009, Dr. Park performed a right knee arthroscopic partial medial meniscectomy and right knee shaving chondroplasty of the medial and lateral femoral condyle. The claimant then underwent a course of physical therapy and continued to experience right knee pain. On February 5, 2009, Dr. Park noted that he planned on having the claimant return to work half-time on February 16, 2009, and eventually back to work full-time.

¶ 10 The claimant returned to work on February 16, 2009, performing light duty tasks for half-days. His employment duties included sitting and sorting mail. Dr. Park administered several injections to the claimant's right knee in February and March 2009, and on March 23, 2009, he noted that it was "quite concerning" that the claimant was still having significant medial knee pain. The claimant testified that his physical therapy was not relieving his pain and that his knee gave out on him in the parking lot one day when he was working a half-day in March 2009.

¶ 11 On March 30, 2009, a few days after the claimant's knee gave out in the parking lot, he returned to see Dr. Park and complained of persistent right knee pain. He also told the doctor about his knee giving out. In the records for this office visit, Dr. Park noted

that the claimant twisted his knee but that there was no acute injury. He took the claimant off work for one week.

¶ 12 The claimant saw Dr. Park on April 6, 2009, with complaints of severe right medial knee pain. He reported that he had been unable to work because of the knee pain. Dr. Park's assessment was "severe endstage right knee osteoarthritis." He noted that the claimant had failed nonoperative treatment and that he was, therefore, indicated for a right total knee arthroplasty.

¶ 13 On April 27, 2009, Dr. Park authored a letter to the claimant's attorney in which he noted that the claimant's "pain abruptly began on December 8, 2008, when he was struck on the anterior aspect of the knee by a metal cart while at work." He further wrote as follows:

"He had no preexisting knee pain at that time. His knee arthritis condition certainly existed prior to his knee injury on December 8, 2008. However, it seems that the injury by the metal cart has precipitated the onset of symptoms and severe degree of knee pain. Therefore, I do believe that the injury by the metal cart contributed to the onset of the patient's right knee pain and problems. Again, the knee arthritis condition itself was asymptomatic prior to his injury on December 8, 2008."

¶ 14 Dr. Park stated in his letter that he had recommended a right total knee arthroplasty. He wrote that a post-injury MRI scan showed a medial meniscus tear and that the claimant underwent a partial medial meniscectomy on January 20, 2009, as well as a shaving chondroplasty. He could not "say with certainty that the injury by the metal

cart caused either of these conditions" but that "it seems that the metal cart injury did precipitate the onset of symptoms from these knee conditions."

¶ 15 On May 1, 2009, Dr. Parks performed a right total knee arthroplasty, and the claimant subsequently underwent physical therapy. The claimant testified that he did not return to work following his second knee surgery, stating that he could not return to the mailroom because of his health. Therefore, he retired.

¶ 16 On November 9, 2009, the claimant reported to Dr. Park that most of the time he was pain-free in his right knee and was functioning well. At times, however, he had some right knee apprehension and felt a bit weak. He experienced occasional numbness over the anterior aspect of his right knee. Dr. Park's examination of the claimant on November 9, 2009, showed that the claimant had a normal gait with no erythema, swelling, or warmth in the right knee. Dr. Park felt that the claimant would continue to improve with a strengthening program and felt that he had recovered well from his total knee arthroplasty.

¶ 17 The claimant returned to Dr. Park on May 17, 2010, for a routine annual visit, and Dr. Park noted that the claimant was "doing well" one year post right total arthroplasty. X-rays showed well-aligned total knee arthroplasty components with a good cement mantle and no radiolucencies.

¶ 18 Dr. Park testified at the arbitration hearing by way of an evidence deposition. During his testimony, Dr. Park opined on whether the December 8, 2008, work accident caused or contributed to the claimant's right medial and lateral meniscus tears. Dr. Park testified that the claimant's meniscus tears looked old and that he did not think that the

accident was the initiating event. However, the claimant was asymptomatic, and he felt that a fall could have manifested the tears and "perhaps make them worse, so it kind of brings on the pain." He testified, "I think [the accident] certainly maybe put him over the edge and made him manifest the pain, so in that way could have led to the cause for" the right knee partial medial meniscectomy and chondroplasty.

¶ 19 With respect to the right total knee replacement, Dr. Park opined that the work-accident "was the starting event that kind of led to that whole downward spiral." The accident did not cause the knee arthritis, but "was the initiating event that led to the whole evolution of his pain." He opined that the accident manifested the claimant's knee pain.

¶ 20 At the request of the employer, Dr. James Cohen performed a records review and testified at the arbitration hearing by way of an evidence deposition. Dr. Cohen opined that the claimant's meniscus tear "would not be caused by a contusion to the knee" or by a twisting injury. He believed that the tear was more indicative of "degeneration usually from years of grinding down the meniscus." On cross-examination, he conceded that a twisting injury could cause an existing tear to get worse.

¶ 21 Dr. Cohen believed that the claimant's arthritic condition in his right knee was unrelated to the work accident. He noted that the claimant was 270 pounds and suffered from a varus deformity or "knock-knee" which increased the likelihood that he would suffer an arthritic condition. He did not believe that the accident caused the need for the total knee replacement surgery given the claimant's advanced arthritic changes as well as the absence of any chondral defect. He believed that the claimant merely bumped his

knee and suffered a contusion which did not aggravate or accelerate the claimant's underlying arthritic condition.

¶ 22 At the conclusion of the arbitration hearing, the arbitrator found that prior to the work-accident, the claimant suffered from a "serious pre-existing arthritic condition" in his right knee. The arbitrator concluded, however, that "the condition was asymptomatic and that [the claimant] was working full duty up to the date of the undisputed accident on December 8, 2008, having never sought let alone received any treatment for any right knee complaints prior to that time." In finding that the accident was "a causative factor" with respect to the claimant's conditions of ill-being in his right knee, the arbitrator emphasized Dr. Park's opinion that the accident was the one precipitating event that finally brought the claimant's underlying condition to the surface and necessitated medical treatment. The arbitrator noted that even the employer's expert, Dr. Cohen, conceded that a twisting injury could cause a preexisting meniscus tear to get worse. The arbitrator found the claimant's testimony that he twisted his knee inward during the accident to be credible and found the opinion of Dr. Park to be "persuasive and worthy of reliance." The arbitrator concluded, "based on the record taken as a whole, including the opinion of Dr. Park," that the workplace accident "was at the very least a causative factor in the subsequent injury and ensuing treatment." Therefore, the arbitrator found that the claimant's current condition of ill-being is causally related to the December 8, 2008, accident.

¶ 23 The arbitrator awarded the claimant \$10,339.85 for incurred medical expenses based on a stipulation submitted by the parties. The arbitrator also awarded the claimant temporary total disability (TTD) and permanent partial disability (PPD) benefits.

¶ 24 The employer appealed the arbitrator's decision to the Commission. The Commission modified the arbitrator's decision by finding that the claimant failed to prove that he was entitled to TTD benefits. The Commission awarded the claimant temporary partial disability benefits and otherwise affirmed and adopted the arbitrator's decision, including the arbitrator's findings with respect to causation.

¶ 25 The employer appealed the Commission's decision to the circuit court. In a lengthy, 12-page judgment, the circuit court confirmed the Commission's decision. The circuit court discussed the evidence presented at the arbitration hearing at length and concluded that "sufficient evidence in the record exists for the [Commission] to conclude causation existed, and this decision was not against the manifest weight of the evidence." The employer did not raise any issues with respect to the dollar amount of the award for medical expenses before the Commission or the circuit court.

¶ 26 The employer now appeals the circuit court's judgment that confirmed the Commission's decision and challenges the Commission's finding with respect to causation and, for the first time, raises an issue with certain medical expenses.

¶ 27 DISCUSSION

¶ 28 I.

¶ 29 Causation

¶ 30 The primary dispute between the parties concerns the issue of causation. The employer contends that the Commission's finding with respect to causation is against the manifest weight of the evidence. We disagree.

¶ 31 A workers' compensation claimant has the burden of proving by a preponderance of the evidence that his injury arose out of and in the course of his employment. 820 ILCS 305/2 (West 2008). Whether an injury arises out of the claimant's employment is a question of fact to be resolved by the Commission, and its decision in this regard will not be disturbed unless it is against the manifest weight of the evidence. *Illinois Institute of Technology Research Institute v. Industrial Comm'n*, 314 Ill. App. 3d 149, 164, 731 N.E.2d 795, 808 (2000). In addition, "[i]n resolving questions of fact, it is within the province of the Commission to assess the credibility of witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence." *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674, 928 N.E.2d 474, 482 (2009). Resolution of conflicts in medical testimony is also within the province of the Commission. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206, 797 N.E.2d 665, 673 (2003).

¶ 32 For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64, 862 N.E.2d 918, 924 (2006). In making this determination, "[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." *Id.* On review, our task is not to determine whether this court might have reached the same

conclusion as the Commission, but to determine whether the record contains sufficient evidence to support the Commission's determination. *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866, 923 N.E.2d 870, 877 (2010).

¶ 33 Applying this standard in the present case, we cannot conclude that the Commission's findings with respect to causation were against the manifest weight of the evidence.

¶ 34 The claimant had the burden of proving that his injuries are work related and not the result of a normal degenerative process. *Gilster Mary Lee Corp. v. Industrial Comm'n*, 326 Ill. App. 3d 177, 182, 759 N.E.2d 979, 983 (2001). He had to prove that there was some causal relationship between his employment and his conditions of ill-being. *Absolute Cleaning/SVML v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 469, 949 N.E.2d 1158, 1165 (2011). He was not, however, required to prove that the conditions of employment were the sole or principle cause of his injury. *Brady v. Louis Ruffolo & Sons Construction Co.*, 143 Ill. 2d 542, 548, 578 N.E.2d 921, 924 (1991).

¶ 35 The Commission found that the claimant was credible when he testified that he did not have any symptoms relating to his right knee prior to the workplace accident at issue. The Commission specifically found that the claimant's arthritic "condition was asymptomatic and that [he] was working full duty up to the date of the undisputed accident on December 8, 2008, having never sought let alone received any treatment for any right knee complaints prior to that time." This finding by the Commission is supported by the claimant's medical records and his testimony and is, therefore, not

contrary to the manifest weight of the evidence. With this finding in mind, we note that "[a] chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury." *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63-64, 442 N.E.2d 908, 911 (1982). Although the evidence established that the claimant's underlying arthritic condition existed prior to the workplace accident, the condition was asymptomatic. The undisputed chain of events lends support to the Commission's finding with respect to causation. Following the workplace accident, the claimant had immediate and consistent knee pain which required medical treatments.

¶ 36 Furthermore, the Commission's findings are consistent with Dr. Park's medical opinions. The interpretation of medical testimony is particularly the function of the Commission. *Freeman United Coal Mining Co. v. Industrial Comm'n*, 286 Ill. App. 3d 1098, 1103, 677 N.E.2d 1005, 1008 (1997). Although the employer's expert, Dr. Cohen, offered opinions that conflicted with Dr. Park's opinions, it is "well settled that the determination of how much weight to assign to a particular piece of evidence is a matter for the Commission, and a reviewing court will not reweigh the evidence and substitute its opinion for that of the Commission's." *ABB C-E Services v. Industrial Comm'n*, 316 Ill. App. 3d 745, 750, 737 N.E.2d 682, 686 (2000).

¶ 37 The Commission weighed the conflicting medical evidence and assigned weight to the conflicting evidence. Nothing in the record conclusively establishes that the

Commission was required to place greater weight on the medical opinions offered by the employer as opposed to the opinions of the claimant's treating physician.

¶ 38 The Commission found Dr. Park's opinions to be more credible based on the nature of his testimony. The Commission noted that Dr. Park believed that the accident was the "straw that broke the camel's back" and caused the claimant's underlying arthritic condition to become symptomatic. With respect to the conflicting opinions of Dr. Cohen, the Commission believed that his testimony improperly focused on whether a contusion could cause the underlying degenerative condition. The Commission gave little weight to Dr. Cohen's opinions because, the Commission noted, the issue before it was whether the accident was a causative factor, not whether it caused the degenerative condition. The Commission noted that the claimant testified credibly when he described his injury as a twisting injury and that even Dr. Cohen conceded that a twisting injury could have caused a pre-existing tear within the claimant's knee to worsen. In addition, Dr. Cohen agreed in his report that the workplace accident "caused a manifestation of symptoms from his preexisting arthritis." During his testimony, he also agreed that, following the accident, the claimant "continued to have symptoms that did not abate."

¶ 39 The "record taken as a whole, including the opinion of Dr. Park" lead the Commission to find that the accident was "at the very least a causative factor in the subsequent injury and ensuing treatment," and we believe there is ample evidence in the record to support that finding.

¶ 40 The employer argues that Dr. Park offered opinions based on speculation because he could not testify specifically "which part of the meniscus tear occurred on [the day of

the accident]" and he testified that he could not "say for sure what specifically happened." In addressing these same arguments, however, the circuit court correctly noted that "Dr. Park clearly testified that the incident aggravated [the claimant]'s knee condition." The court observed that "there was a clear, traceable, cause and effect relationship between the trauma and the onset of symptoms" and that the "relentless symptoms" caused the claimant "to receive an arthroscopy and full knee replacement." Dr. Park noted that he had other patients with arthritic conditions that were asymptomatic until an accident triggered the pain. The circuit court concluded, and we agree, that "Dr. Park's conclusions, firmly grounded in logic, and based on a well-proven chain of events, are not speculative."

¶ 41 Although the claimant's arthritic knee condition was preexisting, it is self-evident that "employers take their employees as they find them." *Sisbro, Inc.*, 207 Ill. 2d at 205, 797 N.E.2d at 672. "When workers' physical structures, diseased or not, give way under the stress of their usual tasks, the law views it as an accident arising out of and in the course of employment." *Id.*, quoting *General Electric Co. v. Industrial Comm'n*, 89 Ill. 2d 432, 434, 433 N.E.2d 671 (1982). The evidence considered by the Commission supports its finding that the claimant's arthritic, asymptomatic knee gave way due to a workplace injury. The evidence, therefore, supports the Commission's finding that the accident was the initiating event that led to the evolution of the claimant's pain. We cannot reverse these findings without ignoring permissible inferences drawn by the Commission, and under these findings, the accident is clearly *a* causal factor with respect

to the claimant's conditions of ill-being. Accordingly, we must affirm the Commission's decision on the issue of causation.

¶ 42

II.

¶ 43

Medical Expenses

¶ 44 The employer argues that the Commission's award for medical expenses improperly included expenses for procedures that were unrelated to the claimant's knee, including charges for earwax removal and high blood pressure. The employer requests that the Commission's award for medical expenses be reduced by \$194.65 for these unrelated charges.

¶ 45 As noted above, the arbitrator awarded medical expenses in accordance with an agreed stipulation submitted by the parties concerning the amount of medical expenses that would be due and owing should the claimant's conditions of ill-being be found to be compensable. Stipulations "have the effect of withdrawing a fact from issue and dispensing wholly with the need for proof of the fact." *Consolidated Construction Co. v. Great Lakes Plumbing & Heating Co.*, 90 Ill. App. 2d 196, 204, 234 N.E.2d 378, 383 (1967). Unless withdrawn, the stipulation is conclusive. *Id.*

¶ 46 The Commission's award of medical expenses was consistent with the parties' stipulation and must be affirmed.

¶ 47 Furthermore, the claimant correctly notes that this issue was not raised by the employer before the Commission or the circuit court. It is a well-settled rule that the failure to raise an issue before the Commission or the circuit court results in its waiver. *Greaney v. Industrial Comm'n*, 358 Ill. App. 3d 1002, 1020, 832 N.E.2d 331, 348 (2005);

May v. Industrial Comm'n, 195 Ill. App. 3d 468, 472, 552 N.E.2d 258, 260 (1990)
(claimant waived her *res judicata* challenge to the Commission's decision where she did not present the issue to the circuit court).

¶ 48 CONCLUSION

¶ 49 For the foregoing reasons, we affirm the circuit court's judgment that confirmed the Commission's decision.

¶ 50 Affirmed.