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2014 IL App (3d) 130140WC-U

Order filed March 19, 2014

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

MARK S. KARNES,)	Appeal from the Circuit Court
)	of Peoria County, Illinois.
)	
Plaintiff-Appellant,)	
)	
v.)	Appeal No. 3-13-0140WC
)	Circuit No. 10-MR-285
ILLINOIS WORKERS' COMPENSATION)	
COMMISSION, <i>et al.</i> , (Wright Tree Service,)	Honorable
Defendant-Appellee).)	Michael E. Brandt,
)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The Commission's finding that the claimant failed to establish that an injury to left shoulder was causally related to his employment was not against the manifest weight of the evidence.

¶ 2 The claimant, Mark S. Karnes, filed two applications for adjustment of claim under the Workers' Compensation Act (Act). 820 ILCS 305/1 *et seq.* (West 2010). The first application (07 WC 27735) alleged a left shoulder injury occurring on October 18, 2006. The second application (08 WC 12992) alleged right elbow and left shoulder injuries occurring on April 7,

2007. The cases were consolidated. After conducting a hearing, an arbitrator found that the claimant was entitled to medical benefits under the Act for the injury to the claimant's right elbow on April 7, 2007, but found that the claimant was not entitled to benefits for an alleged injury to his left shoulder on either date. The arbitrator found that the claimant had failed to establish a causal connection between an industrial accident and his current condition of ill-being of the left shoulder. The claimant sought review before the Illinois Workers' Compensation Commission (Commission), which affirmed and adopted the arbitrator's decision. The claimant then sought judicial review of the Commission's decision in the circuit court of Peoria County, which confirmed the decision of the Commission. The claimant then filed a timely appeal with this court.

¶ 3

FACTS

¶ 4 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on March 24, 2009. The evidence included the testimony of the claimant, his supervisor, and the claimant's written medical records.

¶ 5 The claimant testified that he had been employed in the tree trimming profession for over 17 years. In October 2006, he was working as a tree trimmer for Wright Tree Service (employer). He testified that he reached out to catch a falling branch when he felt a "pop" in his left shoulder. At the time, he was holding the branch in his left hand and a chainsaw in his right hand. After feeling the "pop" in his left shoulder, according to the claimant's testimony, he informed his foreman, Danny McMillen, of the incident, telling McMillen that he had a "pulled muscle." The claimant worked the remainder of his scheduled shift and did not seek medical attention. The claimant testified that he could not remember the exact date of the alleged accident. He gave a specific date of October 18, 2006, on his application for adjustment of claim. However, he testified that this date was an approximation.

¶ 6 The claimant continued to work without seeking any medical attention for his left shoulder until approximately March or April of 2007. He testified that by April 2007 the pain in his left shoulder had gradually increased to the point where he needed medical treatment, so he sought medical treatment for his left shoulder from Dr. Daniel Hoffman. He also testified that he began to experience a sharp pain in his right elbow in early April of 2007.

¶ 7 On April 7, 2007, the claimant told McMillan that he injured his right elbow while working. McMillan drove the claimant to the local hospital for an evaluation.

¶ 8 Dr. Hoffman's treatment records show an initial appointment on April 7, 2007, at which time claimant gave a history of an "onset of pain in the left shoulder that popped and pain in the right elbow *** in early March." The claimant returned to Dr. Hoffman on several occasions from April 11, 2007, to June 14, 2007. Dr. Hoffman's treatment notes make no mention of an injury to the left shoulder in October 2006. Dr. Hoffman diagnosed right elbow strain and possible left shoulder impingement.

¶ 9 The claimant testified that he tried to work following his appointment with Dr. Hoffman, but he had been unable to work since April 30, 2007 due to his left shoulder condition. The medical records established that the claimant's right elbow strain was completely resolved by April 30, 2007.

¶ 10 On June 14, 2007, the claimant sought treatment for his left shoulder from Dr. George Lane. Dr. Lane diagnosed left shoulder impingement syndrome. His treatment consisted of five physical therapy sessions and one steroid injection. When the physical therapy did not appear to provide any pain relief, Dr. Lane recommended acromioplasty surgery on the left shoulder.

¶ 11 In a letter to the claimant's attorney dated July 16, 2007, Dr. Lane opined that the claimant's left shoulder condition was causally related to the repetitive nature of the claimant's employment as a tree trimmer. In a subsequent letter to the claimant's attorney, dated August 21,

2007, Dr. Lane advised that his previous letter contained a dictation error regarding repetitive trauma. In the second letter, Dr. Lane opined that the claimant's current condition of ill-being regarding his left shoulder was causally related to an injury incurred on or about October 18, 2006.

¶ 12 In his evidence deposition, Dr. Lane testified on direct examination that it was his understanding that the claimant had undergone a full course of physical therapy on his left shoulder. On cross-examination, Dr. Lane acknowledged that the claimant had received only five physical therapy sessions. He further conceded that five sessions of physical therapy was too few before surgery would normally be advised. Also on cross-examination, Dr. Lane acknowledged that the claimant told him that he had been working out with weights, an activity which, Dr. Lane acknowledged, would have contributed to any impingement syndrome to the left shoulder.

¶ 13 On August 6, 2008, the claimant was examined at the request of the employer by Dr. Christopher Wottowa, a board certified orthopedic surgeon. Dr. Wottowa diagnosed severe rhomboid strain in the left shoulder. He opined that the condition was not one which would respond to surgery, and he recommended against surgical intervention. He also opined that the claimant's left shoulder pain made his work activities as a tree trimmer unlikely. Dr. Wottowa gave no opinion as to cause for the claimant's current condition of ill-being.

¶ 14 Dan McMillan testified that he was the claimant's supervisor during the relevant time period. He testified that the claimant did not report a work injury to him during October 2006. He also testified that the claimant worked from October 2006 to April 2007 without any complaints regarding his left shoulder. McMillan testified that the claimant did report a work related injury to him in April 2007, which he forwarded to the human resources department in accordance with company policy.

¶ 15 Based upon this evidence, the arbitrator found that the claimant had failed to prove that he had sustained an accidental injury to his left shoulder on October 18, 2006. The arbitrator further determined that the claimant had failed to establish that he had given notice of a left shoulder injury as a result of an accident on October 18, 2006. In reaching these findings, the arbitrator found that the claimant was not a credible witness. The arbitrator further noted that no medical records supported the claimant's claim of an injury in October 2006 and the credible testimony of McMillen established that the claimant worked without complaint from October 2006 until April 2007.

¶ 16 As for the injuries to the claimant's right elbow sustained on April 7, 2007, the arbitrator found that the claimant had established he suffered an accidental injury on that date. The arbitrator awarded medical expenses for treatment of the right elbow. The arbitrator denied TTD benefits for the right elbow injury as the record established that the claimant worked light duty from April 7, 2007, until April 30, 2007, at which time the right elbow strain was completely resolved.

¶ 17 The claimant sought review before the Commission, which affirmed and adopted the arbitrator's award. The claimant then sought judicial review of the Commission's decision in the circuit court of Peoria County, which confirmed the Commission's decision. The claimant then appealed to this court arguing that the Commission's denial of benefits for his alleged left shoulder injuries were against the manifest weight of the evidence.

¶ 18 **ANALYSIS**

¶ 19 In this appeal, the claimant argues that the Commission erred in finding that he failed to establish a causal connection between his current condition of ill-being of his left shoulder and a work-related accident on either October 18, 2006, or April 7, 2007. In a workers' compensation case, the claimant has 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, 403 N.E.2d 221 (1980).

Whether a causal relationship exists between a claimant's employment and his injury is a question of fact to be resolved by the Commission, and its resolution of such a matter will not be disturbed on appeal unless it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill.2d 236, 244, 461 N.E.2d 954 (1984). In resolving such issues, it is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *O'Dette*, 79 Ill.2d at 253. For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill.App.3d 288, 291, 591 N.E.2d 894 (1992).

Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's determination of a question of fact is supported by the manifest weight of the evidence. Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450, 440 N.E.2d 90 (1982). Although we are reluctant to set aside the Commission's decision on a factual question, we will not hesitate to do so when the clearly evident, plain, and indisputable weight of the evidence compels an opposite conclusion. *Montgomery Elevator Co. v. Industrial Comm'n*, 244 Ill. App. 3d 563, 567, 613 N.E.2d 822 (1993).

¶ 20 In this case, the Commission's finding that the claimant's left shoulder condition was not causally related to his employment was not against the manifest weight of the evidence. The Commission based its decision on: (1) complete lack of any medical evidence showing that the claimant was treated for a left shoulder injury occurring in October 2006; (2) Dr. Hoffman's treatment records reporting the onset of left shoulder pain in early March 2007; (3) McMillan's credible testimony that the claimant did not report a work-related injury in October 2006; (4) the fact the claimant continued to perform heavy labor from October 2006 to April 2007 without any

complaints of left shoulder pain; and (5) the lack of credibility in Dr. Lane's medical opinion regarding causation and the need for surgery.

¶ 21 The claimant maintains that the Commission improperly interpreted Dr. Hoffman's records to state that the onset of left shoulder pain did not appear before March 2007. He maintains that the record showed he complained of left shoulder pain in October 2006. While his own testimony would support such a conclusion, the Commission was free to reject his testimony and its interpretation of Dr. Hoffman's written record as establishing the **onset** of left shoulder pain in March 2007 was not against the manifest weight of the evidence. The claimant also maintains that it was against the manifest weight of the evidence for the Commission to reject Dr. Lane's opinions regarding causation and the need for left shoulder surgery. We disagree. The weight of Dr. Lane's causation testimony was diminished by his admitted mistake in initially characterizing the claimant's injury as the result of repetitive trauma, and his opinion regarding the need for surgery was impeached by his admission that the proper physical therapy protocol had not been followed. Based on this record, it cannot be said that the Commission's denial of benefits for the claimant's left shoulder was against the manifest weight of the evidence.

¶ 22 Having found that the Commission's determination that the claimant failed to establish a causal connection between the condition of his left shoulder and an accidental injury on either October 18, 2006, or April 7, 2007, we do not need to address the issues of notice, TTD and medical expenses raised by the claimant.

¶ 23 **CONCLUSION**

¶ 24 For the foregoing reasons, the judgment of the circuit court confirming the decision of the Commission is affirmed.

¶ 35 Affirmed.