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2014 IL App (3d) 130659WC-U

Order filed September 17, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

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KENNETH RUTHERFORD,	)	Appeal from the Circuit Court
	)	of the Tenth Judicial Circuit,
Appellant,	)	Peoria County, Illinois.
	)	
v.	)	Appeal No. 3-13-0659WC
	)	Circuit No. 13-MR-127
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, <i>et al.</i> , (Peoria Public School	)	Honorable
District 150, Appellees).	)	Michael E. Brandt,
	)	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 findings that: (1) the claimant's current condition of ill-being was not causally connected to an industrial accident; (2) the claimant was not entitled to TTD benefits after June 1, 2011; and (3) the claimant was not entitled to vocational rehabilitation were not against the manifest weight of the evidence.

¶ 2 The claimant, Kenneth Rutherford, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2010)) alleging injuries to his low back, neck, and right Achilles tendon occurring as the result of an industrial accident on November 24, 2010. After conducting a hearing, an arbitrator found that: (1) the claimant sustained accidental injuries arising out of and in the course of his employment on November 24,

2010; (2) the claimant reached maximum medical improvement (MMI) on May 31, 2011; (3) the claimant's current condition of ill-being was not causally related to the November 24, 2010, accident; (4) the claimant was entitled to temporary total disability (TTD) benefits until May 31, 2011; and (5) the claimant was not entitled to payment of any medical expenses after May 31, 2011. The arbitrator also denied the claimant's request for vocational rehabilitation. The claimant sought review before the Illinois Workers' Compensation Commission (Commission), which affirmed and adopted the arbitrator's decision with one modification. The Commission noted that the arbitrator had not provided a date upon which TTD benefits were to have commenced. The Commission found that the claimant was entitled to TTD benefits beginning March 31, 2011, and ending on May 31, 2011, for a period of 8 and 5/7 weeks. The claimant 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 based on the evidence presented at the arbitration hearing conducted on March 21, 2012. 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 by Peoria Public School District 150 (the employer) in various support positions since 1997. On November 24, 2010, the claimant was employed as the head custodian at Lincoln Middle School. The claimant testified that his job duties as head custodian included inventory control and general building cleaning and maintenance. Among his specific job tasks was moving and lifting classroom furniture weighing between 25 and 50 pounds. As head custodian, the claimant often assisted other maintenance workers on an "as-needed" basis.

¶ 6 On November 24, 2010, the claimant was assisting a painter by holding a scaffold in place while the painter was painting a wall. The claimant testified that the scaffolding collapsed and a part of the scaffold fell onto his low back, neck, and his right Achilles tendon. The claimant further testified that, in addition to a portion of the scaffold falling on him, the painter and a paint bucket also landed on top of the claimant. The claimant immediately telephoned his supervisor, Dave Meyers, and reported the incident. An ambulance was called which took the painter to a nearby hospital. The claimant did not believe that he needed medical care. However, Meyers insisted that the claimant seek treatment at the employer's occupational treatment provider, Illinois Work Injury Resource Center (IWIRC).

¶ 7 The claimant drove himself to IWIRC and was examined by Dr. Dru Hauter, a board-certified internist. The claimant gave a history of an accident that day where a scaffold fell on his low back, neck and right Achilles tendon. Following a physical examination, Dr. Hauter diagnosed a hematoma on the posterior right calf and a contusion on the right portion of the low back. Dr. Hauter released the claimant to return to work immediately without restrictions.

¶ 8 The claimant continued to treat with Dr. Hauter from November 30, 2010, to January 6, 2011. Medical records from IWIRC were entered into evidence indicating the claimant reported stiffness and soreness in his neck and low back. He reported sharp pains shooting through his neck and spine which caused difficulty sleeping. Dr. Hauter noted bruises on the neck and low back and some mild tenderness at T10-T12. He continued to diagnose a contusion on the right lower back and a hematoma on the right calf. Dr. Hauter recommended a course of physical therapy for the claimant's complaints of low back pain. IWIRC records indicate the claimant underwent physical therapy sessions on December 9, 16, 20, 22, and 29, 2010, and January 6, 2011. After each treatment session, the claimant was released with no work restrictions. The

claimant acknowledged that after the January 6, 2011, session, Dr. Hauter informed him that he had no apparent condition of ill-being.

¶ 9 The claimant testified that he continued to suffer from low back and neck pain after his physical therapy ceased, so he sought chiropractic treatment from Dr. Dean Trotter. Dr. Trotter's treatment records indicated treatment from December 8, 2010, through June 22, 2011. His treatment consisted of massages, electro-therapy, and adjustments. The claimant testified that he was able to work without restriction until March 31, 2011. He further testified that he has not worked since March 31, 2011.

¶ 10 On March 31, 2011, the claimant was examined again by Dr. Hauter, who reported no noticeable change in the claimant's condition. This was the last time Dr. Hauter examined or treated the claimant.

¶ 11 The claimant testified that he consulted his personal physician, Dr. Norman Nathan, regarding his continuing low back pain. Dr. Nathan ordered an MRI of the low back which was performed on January 12, 2011. Dr. Nathan then referred the claimant to Dr. Richard Kube, a board-certified spinal surgeon.

¶ 12 Dr. Kube's medical treatment records were admitted into evidence. The claimant was first examined by Dr. Kube on February 8, 2011. Dr. Kube noted that the claimant recently started chiropractic treatment with Dr. Trotter, and the treatment had resulted in some improvement. Dr. Kube diagnosed sprain/strain of the lumbar spine, degenerative disc disease, spinal stenosis, thoracic lumbosacral neuritis and radiculitis. He prescribed physical therapy, pain medication and epidural steroid injections. The claimant received treatment from Dr. Kube from February 14, 2011, until April 12, 2011.

¶ 13 On April 12, 2011, Dr. Kube ordered a functional capacity evaluation (FCE), which was performed on May 24, 2011. The FCE established that the claimant was capable of working at a

heavy demand work level. The FCE also established that the claimant was able to perform the job duties of his current job position, a head custodian. The FCE recommendation was that the claimant should be released to work full-duty with no restrictions. The report did indicate, however, that frequent heavy lifting (*i.e.*, over 50 pounds) should be avoided as well as overhead lifting greater than 25 pounds.

¶ 14 On May 31, 2011, Dr. Kube examined the claimant for a final time. In addition to a physical examination, Dr. Kube reviewed the FCE report. Dr. Kube opined that the claimant's FCE results established his ability to perform under the job description of head custodian. Dr. Kube opined that the claimant was able to fulfill the job duties of head custodian without any difficulty. Dr. Kube did note that although frequent lifting of greater than 50 pounds did not appear in the claimant's job description, he would include a 50 pound lifting restriction in the claimant's return-to-work order. He further opined that the claimant was at MMI as of May 31, 2011, and discharged the claimant from further care on that date.

¶ 15 On August 18, 2011, the employer sought a written report from Dr. Hauter regarding the claimant's condition. Dr. Hauter opined that the claimant suffered from degenerative disc disease of the lumbar spine, with minimal degenerative spondylolisthesis. He further opined that the effects of the November 24, 2010, accident had completely resolved as of March 31, 2011, and that the claimant was at MMI as of that date. Dr. Hauter further opined that the claimant's degenerative disc disease made it unsafe for the claimant to work as a head custodian unless the job could be modified "to medium/heavy lifting, lifting 50 [pounds] occasionally, 25 pound[s] frequently with minimal bending or twisting of the back." The claimant testified that the employer was unable to accommodate those restrictions.

¶ 16 On September 8, 2011, the claimant was examined at the request of the employer by Dr. Gunnar Andersson, a board-certified orthopedic surgeon with a practice at Rush Hospital in

Chicago. Dr. Andersson examined the claimant and reviewed all the claimant's medical records. Dr. Andersson opined that the claimant suffered only a contusion of the low back as a result of the November 24, 2010, accident. Dr. Andersson further opined that the claimant could currently work without restrictions and that the industrial accident of November 24, 2010, had caused no permanent impairment to the claimant.

¶ 17 The claimant testified that he believed that he could return to the full-duty as a head custodian. He also testified that he had begun a job search immediately prior to the hearing, and, on cross-examination, admitted that he had turned down two job offers during his search. The claimant also admitted on cross-examination that he was capable of performing unrestricted work as a truck driver, laborer, and several other jobs requiring medium/heavy lifting.

¶ 18 The arbitrator found that the claimant was involved in a work-related accident on November 24, 2010, and suffered some injuries as a result. However, the arbitrator found that the credible testimony of Drs. Kube, Andersson, and Hauter all established that the effects of the accident had been limited and had completely resolved by May 31, 2011, based upon the opinion of Dr. Kube. Although Dr. Hauter placed the date of MMI at March 30, 2011, and opined that the claimant had degenerative disc disease that imposed restrictions, the arbitrator found all the medical opinions consistent in establishing that the November 24, 2010, accident resulted in only mild contusions. In addition, the arbitrator further noted that the medical opinions that the claimant suffered no permanent impairment as a result of the November 24, 2010, accident did not support the claimant's request for vocational rehabilitation.

¶ 19 The claimant sought review before the Commission, which affirmed and adopted the arbitrator's award with the single correction of setting a starting date of March 31, 2011, for TTD benefits. The Commission noted that the claimant continued to work without restrictions from the date of the accident until March 31, 2011. The Commission further noted that during that

time period the claimant was examined, treated, and found capable of performing his job at a full-duty level without restriction by both Dr. Hauter and Dr. Kube. The Commission further noted that when Dr. Kube imposed moderate duty restrictions on May 31, 2011, the restrictions were not related to the November 24, 2010, industrial accident.

¶ 20 The claimant sought judicial review of the Commission's decision in the circuit court of Peoria County, which confirmed the Commission's decision. The claimant then filed a timely appeal to this court.

¶ 21 **ANALYSIS**

¶ 22 1. Causation

¶ 23 In this appeal, the claimant first argues that the Commission erred in finding that he failed to establish a causal connection between his current condition of ill-being at the time of the hearing and the work-related accident on November 24, 2010. 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 (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 this 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 (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 (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 (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 (1993).

¶ 24 In this case, the Commission's finding that the claimant's current condition of ill-being at the time of the hearing was not causally related to his employment was not against the manifest weight of the evidence. The Commission based its decision on: (1) the fact that the claimant continued to work at his job duties for approximately four months after the accident without restrictions; (2) Dr. Hauter was of the opinion that the effects of the accident had completely resolved by March 28, 2011, the date upon which he released the claimant from treatment; (3) the FCE demonstrated that the claimant's physical capabilities fell well within the job duties of the claimant's current position; (4) Dr. Kube, the claimant's chosen treating physician, opined that the claimant suffered only a low back sprain/strain as a result of the accident and that his condition had completely resolved as of May 31, 2011, the last date upon which he examined the claimant.

¶ 25 The claimant maintains that the Commission's reliance upon those factors was against the manifest weight of the evidence in view of the fact that Dr. Kube also opined that the claimant was in need of some permanent restrictions requiring "moderate" physical exertion. However, while the record established that Dr. Kube imposed moderate work restrictions on the claimant, the record also supports a finding that those restrictions did not restrict the claimant from working in his current job as a head custodian. More importantly, those restrictions were imposed not as a result of the industrial accident, but instead were made necessary by the claimant's degenerative condition which the Commission found to be unrelated to the accident.

Based on this record, the Commission's finding that the industrial accident of November 24, 2010, left no permanent effects, and had completely resolved by May 31, 2011, was not against the manifest weight of the evidence.

¶ 26

## 2. TTD Benefits

¶ 27 The claimant next maintains that the Commission erred in failing to award TTD benefits from June 1, 2011, to March 21, 2012, the date of the arbitration hearing. The claimant relies upon *Interstate Scaffolding v. Illinois Workers' Compensation Comm'n*, 236 Ill. 2d 132, 150 (2010) for the proposition that an employee entitled to TTD benefits is entitled those benefits after his employment had been terminated. The claimant argues that his case is controlled by the holding in *Interstate Scaffolding* since his employment was terminated by the employer when it was unable to offer him employment within the restrictions imposed by Dr. Kube. We disagree.

¶ 28 The facts in the instant matter are significantly different from those in *Interstate Scaffolding*. In that case, the claimant was receiving TTD benefits when he was terminated for conduct unrelated to his work-related injury. *Interstate Scaffolding*, 236 Ill. 2d at 146. In that case, there was no dispute that, but for the termination, the claimant therein was entitled to continue receiving TTD benefits as he had yet to reach MMI prior to the termination of his employment. *Id.* Here, to the contrary, the claimant's entitlement to TTD benefits was terminated when, according to the Commission, he reached MMI on May 31, 2011. As of that date, he was no longer entitled to TTD benefits. We hold that *International Scaffolding* does not permit the claimant to receive TTD benefits after May 31, 2011.

¶ 29

## 3. Vocational Rehabilitation

¶ 30 The claimant lastly maintains that the Commission erred in not awarding him vocational rehabilitation expenses. The Commission's findings as to vocational rehabilitation will not be overturned on appeal unless they are against the manifest weight of the evidence. *National Tea*

*v. Industrial Comm'n*, 97 Ill. 2d 424 (1983). The Commission considers several factors when determining whether vocational rehabilitation is appropriate, including the claimant's ability to obtain similar employment without the need for training or education. *Id.*

¶ 31 Here, the record established that the claimant: (1) could currently work at numerous jobs requiring moderate physical exertion; (2) could function in his former occupation as a head custodian even with the restrictions imposed by Dr. Kube; and (3) in fact turned down two job offers he received shortly prior to the hearing. Given this record, it cannot be said that the Commission's finding that the claimant was not in need of vocation rehabilitation services was against the manifest weight of the evidence.

¶ 32 **CONCLUSION**

¶ 33 Based upon the foregoing analysis, we affirm the judgment of the circuit court of Peoria County which confirmed the decision of the Commission and remand the matter to the Commission for further proceedings.

¶ 34 Affirmed; Cause remanded.