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2014 IL App (4th) 130199WC-U

Order filed June 24, 2014

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

JILL HACKER,)	Appeal from the Circuit Court
)	of the Sixth Judicial Circuit,
)	Champaign County, Illinois
Appellant,)	
)	
v.)	Appeal No. 4-13-0199WC
)	Circuit No. 12-MR-89
)	
ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION, <i>et al.</i> , (Carle Foundation)	Charles McRae Leonhard,
Hospital, Appellee).)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The Commission's finding that the claimant failed to prove an accident is not against the manifest weight of the evidence.

¶ 2 The claimant, Jill Hacker, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2008)), seeking benefits for a lower back injury which she allegedly sustained on June 4, 2009, while working for Carle Foundation

Hospital (employer). After conducting a hearing, an arbitrator found that the claimant failed to prove that an accident occurred, and denied benefits.

¶ 3 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). The Commission unanimously affirmed and adopted the arbitrator's decision.

¶ 4 The claimant then sought judicial review of the Commission's decision in the circuit court of Champaign County, which confirmed the Commission's ruling. This appeal followed.

¶ 5 **FACTS**

¶ 6 The claimant worked for the employer as a registered nurse providing home health services. On June 4, 2009, she made a home visit to Charles Stark, a patient who had recently undergone cardiac bypass surgery. The claimant testified that, while walking up the concrete steps to Mr. Stark's door, she stumbled on a steel pipe that ran across one of the steps. Although she could not recall what part of her foot came into contact with the pipe, she believed that it was the pipe that caused her to stumble. She was able to regain her balance without falling. The claimant testified that she felt pain in her lower back and shoulder immediately after she stumbled.

¶ 7 One of the claimant's duties at the Stark home that day was to complete a health assessment of Mr. Stark and a safety assessment of his home. Following the alleged stumbling incident, the claimant entered the Stark home and completed these assessments. She did not discuss the alleged stumbling incident with Charles Stark or with his wife, Linda. Nor did she mention the incident (or the allegedly exposed pipe) in the section of the safety assessment

labeled "Safety and Falls." The visiting records for Charles Stark did not indicate that there were any safety hazards in the home.

¶ 8 The claimant testified that, on June 5, 2009, she had spasms in her lower back with pain shooting down the back of her legs. Nevertheless, she continued to work and did not seek medical treatment for approximately 10 days after the alleged work accident. The claimant stated that, approximately two years before the alleged work accident, she was treated for a lower back condition with associated right leg pain and had consulted with a neurosurgeon. She claimed that, based on her previous experience with lower back pain, she felt it was appropriate to wait and see if the pain and spasms would subside before seeking medical treatment. She testified that she decided to pursue treatment when these symptoms were still present 10 days after the accident.

¶ 9 On July 1, 2009, the employer completed a form 45 accident report. In describing the alleged accident on the form, the employer reported that the claimant had "tripped on [a] Gas Line at [the] Patient's home."

¶ 10 The claimant testified that, sometime between June 5 and July 16, 2009, she returned to the Stark home and took photographs of the site of the alleged accident. The photographs show concrete steps with a pipe running against the back of one of the steps. The claimant testified that these photographs depicted the steps as they existed on June 4, 2009, (the date of the alleged accident).

¶ 11 Charles Stark testified on behalf of the employer. Mr. Stark stated that his house has a driveway alarm which rang on June 4, 2009, as the claimant walked toward his door, causing him to look out the front window as the claimant approached the house. Mr. Stark testified that he did not see the claimant, trip, fall, twist, or stumble at that time. He further stated that, at that

time, the concrete steps where the pipe was allegedly located were covered by a large deck. Mr. Stark claimed that he did not remove the deck until July 10, 2009, at the earliest. He stated he knew this because he was under severe activity restrictions for five to six weeks following his cardiac bypass surgery. He noted that, after the deck was removed, there was a bare spot on the ground which had been covered by the deck. While on the witness stand, Mr. Stark reviewed the photographs taken by the claimant. He acknowledged that there were large weeds growing around the area of the concrete steps depicted in the photographs. However, he stated that he could not give an opinion as to when the photographs had been taken.

¶ 12 Linda Stark, Charles Starks's wife, also testified on behalf of the employer. Mrs. Stark stated that she was present at the time the claimant visited the Stark residence on June 4, 2009. She testified that there was a driveway alarm at the Stark residence which sounded when the claimant drove into the driveway. Mrs. Stark stated that, when the alarm sounded, she looked out the window and observed the claimant walk from her car to the door and did not see the claimant stumble or trip. She also testified that the claimant could not have stumbled on the pipe or even have used the concrete steps depicted in the photograph because the steps and pipe were covered by a large wooden deck which was not removed until after June 4, 2009.

¶ 13 Beginning on June 15, 2009, the claimant received treatment for her lower back pain and associated symptoms. She initially received epidural injections and underwent physical therapy. However, these conservative measures failed to relieve her symptoms. After the claimant was diagnosed with an annular tear and disc herniation at L4-5, she underwent a surgical laminectomy at L4-5 and the placement of a spinous process distractor at L4-5. The records of some of her health care providers note that the claimant tripped and twisted her back at work. One of her treating doctors also noted that the claimant's symptoms were consistent with the

work accident she described. Based upon the claimant's medical records and the accident history provided by the claimant, the employer's section 12 medical examiner noted that the claimant had "tripped over a gas pipeline" and opined that the claimant suffered a soft tissue injury to her lumbar spine on June 4, 2009.

¶ 14 The claimant testified that she had disabling pain in her lower back and left leg from the day after the accident until the day of surgery on September 14, 2010. Although she acknowledged that she had received treatment for lower back pain before the alleged June 4, 2009, work accident, she claimed that the back pain she experienced after the alleged accident was different and more disabling.¹ Moreover, although the claimant testified that she had also experienced pain in her right leg prior to the alleged accident on June 4, 2009, she claimed that she did not experience any pain in her left leg until after the alleged accident.

¶ 15 The arbitrator found that the claimant had "failed to meet her burden of proving [an] accident." The arbitrator noted that the claimant was "unable to describe how she stumbled" and that "there [was] a significant question as to whether the pipe she [allegedly] tripped on was even present at the time of her home healthcare visit." In addition, the arbitrator observed that there was no date indicated on the photograph taken by the claimant "despite that evidence being in [the claimant's] control." Moreover, the arbitrator noted that the pipe depicted in the claimant's photograph was "against the back of the steps" and questioned "how it was even possible to trip

¹ Prior to June 4, 2009, the claimant was able to engage in the full performance of her work duties as a home care nurse. She was unable to do so after June 4, 2009. The claimant was placed on light duty on June 15, 2009, and she continued to work with restrictions until September 24, 2009, when she was taken off work completely. She was released to return to work full duty as a registered nurse on March 7, 2010, almost six months after her back surgery.

over a pipe completely against a back step." Further, the arbitrator stressed that the safety assessment form completed by the claimant during her visit to the Stark home indicated no tripping hazard.

¶ 16 The claimant appealed the arbitrator's decision to the Commission, which unanimously affirmed and adopted the arbitrator's decision.

¶ 17 The claimant then sought judicial review of the Commission's decision in the circuit court of Champaign County, which confirmed the Commission's ruling. The circuit court acknowledged that the Form 45 accident report signed by the employer stated that the claimant had "tripped on [a] gas line at the [Starks's] home," which appeared to contradict the Starks's testimony that the stairway over which the gas pipe ran was covered by a wooden deck at the time of the accident. However, the court noted that presence of the pipe was not the "linchpin" of the Commission's decision and that the Commission's finding of no accident was based on additional considerations. For example, the court noted that the Commission had also relied upon Charles Stark's and Linda Stark's testimony that they watched the claimant walk to their door and did not see her stumble. Moreover, the court noted that the claimant's testimony about the alleged accident was "not exactly bristling with detail" and that the claimant "admittedly made no mention of the presence of the pipe as a potential hazard when called upon to evaluate her patient's risk of a fall." The court noted that it was the Commission's province to resolve conflicts in the evidence and to weigh the credibility of witnesses, and it concluded that the Commission's finding of no accident was not against the manifest weight of the evidence because the record did not establish that "the opposite conclusion is readily evident." This appeal followed.

¶ 18

ANALYSIS

¶ 19 The claimant has the burden of establishing, by a preponderance of the evidence, that her injury arose out of and in the course of her employment. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253 (1980); *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC, ¶ 35. Whether an injury arose out of and in the course of one's employment is a question of fact. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). It is the function of the Commission to decide questions of fact, judge the credibility of witnesses, determine the weight that their testimony is to be given, and resolve conflicts in the evidence. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206 (2003); *O'Dette*, 79 Ill. 2d at 253. The Commission's credibility determinations and other factual findings will not be disturbed on review unless they are against the manifest weight of the evidence. *Shafer*, 2011 IL App (4th) 100505WC at ¶¶ 35-36.

¶ 20 For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be "clearly apparent." *Id.* at ¶ 35; see also *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 291 (1992). The appropriate test is whether the record contains sufficient evidence to support the Commission's decision, not whether this court might have reached the same conclusion. *Metropolitan Water Reclamation District of Greater Chicago v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 1010, 1013 (2011).

¶ 21 In this case, Charles and Linda Stark testified that they watched the claimant as she approached the door to their house and did not see her stumble. Although the claimant contradicted this testimony, the Commission credited the Starks's testimony over the claimant's and resolved the conflicts in the evidence in favor of the employer. We cannot say that the

Commission's credibility determinations or its factual finding that no work-related accident occurred were against the manifest weight of the evidence.

¶ 22 The claimant characterizes the Starks's testimony as "fabricated" and argues that "the plain and indisputable weight of the evidence compel[s] *** [the] conclusion that [the Starks's testimony was] false." In support of this claim, the claimant notes that Charles and Linda Starks's testimony that the pipe at issue was covered by a wooden deck until at least July 10, 2009, was contradicted by the claimant's testimony, the employer's July 1, 2009, accident report, the claimant's application for adjustment of claim, and the claimant's attorney representation agreement, all of which indicate that the claimant tripped on an exposed pipe on June 4, 2009. The claimant also notes that the photographs she took sometime between June 5 and July 16, 2009, show concrete steps with an exposed pipe running across one of the steps. However, while some of this evidence establishes that the claimant mentioned the exposed pipe prior to July 10, 2009, (thereby contradicting Charles Starks's claim that the pipe was not exposed until July 10, 2009, or later), it does not establish that the pipe was exposed on June 4, 2009, the date of the accident. Moreover, even assuming *arguendo* that the pipe was exposed on June 4, 2009, this does not establish that the claimant actually stumbled on the pipe on that date. The Commission was entitled to credit the Starks's eyewitness testimony, which supported a contrary inference.²

² The dissent maintains that the Commission's decision is against the manifest weight of the evidence because the claimant told one of her doctors on June 14, 2009, that she had tripped on a pipe at a patient's home, which makes it difficult to believe that the pipe had been covered by a wooden deck until July 10, 2009, as Charles Stark claimed. However, even if Charles Stark was wrong about the date the deck was removed, the Commission was still entitled to credit Charles and Linda Starks's occurrence testimony (*i.e.*, their testimony that they watched the claimant as

¶ 23 Moreover, as the Commission and the circuit court noted, the claimant's account of the mechanism of her injury lacked detail. In addition, although the claimant was tasked with assessing Charles Starks's risk of falling, she did not identify the allegedly exposed pipe as a tripping hazard in her safety assessment of the Starks's home. These facts lend additional support to the Commission's finding of no accident.

¶ 24 The claimant argues that the medical records of her treating physicians and the report of the employer's own section 12 medical examiner support the claimant's description of the accident. She also contends that Charles and Linda Stark were biased witnesses because the claimant had filed a lawsuit against Charles Starks in connection with the same accident she alleged in this case. We find these arguments unavailing. The accounts of the claimant's alleged accident contained in the medical records and IME reports were based on the accident history that the claimant herself provided. Thus, contrary to the claimant's suggestion, these records and reports do not provide an independent corroboration of the claimant's testimony regarding the accident. Moreover, although several of the medical records refer to a tripping or twisting injury, only one of them (Dr. Grotrian's June 14, 2009, record) specifically mentions that the claimant tripped on a pipe at a patient's home on June 4, 2009. The remaining records do not provide any details regarding the mechanism or location of the alleged injury and therefore do not support the claimant's testimony as to those issues.³

she approached the door to their house and did not see her stumble). Moreover, although the claimant's statement to her doctor suggests that the pipe was exposed on or before June 14, 2009, it does not establish that the pipe was exposed on the date of the alleged accident, or, if so, that the claimant tripped on it.

³ As noted above, one of the claimant's treating doctors noted that the claimant's symptoms were

¶ 25 Regarding the issue of the Starks's alleged bias, it was for the Commission to weigh the credibility of the witnesses and to resolve conflicts in their testimony. Based on the evidence presented, we cannot say that the Commission's decision to credit the Starks's testimony over the claimant's was against the manifest weight of the evidence.

¶ 26 In sum, there is sufficient evidence in the record to support the Commission's finding of no accident and an opposition conclusion is not "clearly apparent." Because we affirm the Commission's finding of no accident, we decline to address the claimant's alternative argument that the claimant's accidental injuries arose out of and in the course of her employment.

¶ 27 **CONCLUSION**

¶ 28 For the foregoing reasons, we affirm the judgment of the circuit court of Champaign County, which confirmed the Commission's decision.

¶ 29 Affirmed.

consistent with the accident she described. This provides some support for the claimant's testimony in that it suggests that the claimant could have injured her back while stumbling, and perhaps even while climbing stairs. However, it does not establish that the claimant's injury occurred *at the Stark home*, as the claimant maintained. In other words, the claimant's doctor's record merely supports the claimant's testimony regarding the *mechanics* of her injury, not her testimony as to the time and place of the injury. The only witnesses who could have corroborated the claimant's testimony on the latter issue were Charles and Linda Stark, and each of them contradicted the claimant's account.

¶ 30 JUSTICE HOFFMAN, dissenting:

¶ 31 I must respectfully dissent in this case, because I believe that logic so dictates.

¶ 32 As the majority correctly notes, the claimant testified that she was injured on June 4, 2009, when she tripped on a pipe while walking up the concrete steps leading to the Starks' front door. Charles Stark testified that the event never happened and, furthermore, that the cement steps where the claimant testified that she tripped on a pipe were covered by a large deck which was not removed until July 10, 2009, at the earliest. The photographs introduced in evidence depict concrete steps leading to the Starks' door with a pipe running against the back of one step. Conceding that the photograph could have been taken after July 10, 2009, when Charles Stark testified that the deck covering the stairs was removed, we are still left with the question of how the claimant knew of the existence of the pipe running across the stairs on June 14, 2009, when Dr. Grotrian's records reflect that she reported that she tripped on a pipe at a patient's home on June 4, 2009, or on July 1, 2009, when the employer's accident report records that the claimant stated that she had tripped on a gas line at a patient's home. If, as Charles Stark testified, the cement steps where the claimant testified that she tripped on a pipe were covered by a large deck which was not removed until July 10, 2009, at the earliest, from whenst came the claimant's knowledge of the existence of the pipe on the stairs weeks before the deck was removed? The dilemma is not resolved in the majority's decision, but more importantly, finds no explanation in the Commission's decision.

¶ 33 Whether the claimant was injured when she tripped on a pipe as she walked up the concrete steps leading to the Starks' front door is a question of fact, and the Commission's determination should not be disturbed on review unless it is against the manifest weight of the evidence. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44 (1987). In this case, absent any

explanation as to how the claimant could possibly have known of the existence of the pipe running across the concrete stairs leading to the Starks' door weeks before the deck covering those steps was removed, I believe that the Commission's decision on the issue of accident is against the manifest weight of the evidence. Consequently, I would reverse the decision of the circuit court which confirmed the Commission's decision, reverse the Commission's decision, and remand the matter back to the Commission for further proceedings.