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2014 IL App (5th) 130302WC-U

FILED: September 23, 2014

NO. 5-13-0302WC

IN THE APPELLATE COURT

OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

RONNIE HARGROVE,)	Appeal from
)	Circuit Court of
Appellee,)	Madison County
)	No. 12MR195
v.)	
)	
THE ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION <i>et al.</i> (Watco Companies, Inc.,)	Barbara L. Crowder,
Appellant).)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Holdridge and Justices Hoffman, Hudson, and Stewart
concur in the judgment.

ORDER

¶ 1 *Held:* The Commission's decision that claimant failed to prove a causal connection between the work accident and his condition of ill-being was not against the manifest weight of the evidence.

¶ 2 On April 20, 2011, claimant, Ronnie Hargrove, filed an application for adjustment of claim pursuant to the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2010)), seeking benefits from the employer, Watco Companies, Inc. He alleged a work accident that occurred on December 29, 2010, listing the nature of injury as "man as a whole; left knee." Following a hearing, the arbitrator denied claimant benefits, concluding

claimant "failed to prove his current left knee condition is causally related to his accident of Dec. 29, 2010."

¶ 3 On review, the Illinois Workers' Compensation Commission (Commission) affirmed and adopted the arbitrator's decision. On judicial review, the circuit court of Madison County reversed and set aside the Commission's decision, awarded past medical expenses, and remanded to the Commission for consideration of claimant's section 8(a) request for prospective medical treatment. The employer filed a motion for reconsideration or, in the alternative, a motion to modify the court's order and strike the remand language. Following a hearing on the motions, the court denied the motion for reconsideration but allowed the motion to strike the remand language, inserting in its place that the employer "shall approve and pay for the prospective medical treatment recommended [for claimant's] left knee condition." This appeal followed.

¶ 4 I. BACKGROUND

¶ 5 The following factual evidence was elicited at the November 17, 2011, arbitration hearing.

¶ 6 Claimant, who was 59 years old at the time of the accident, testified he had worked for the employer for approximately 34 years as a maintenance repairman. On the morning of December 29, 2010, as claimant entered one of the employer's buildings to turn on the lights, he tripped over an "I-beam" that was lying in the doorway which he did not see because it was dark. Regarding the incident, claimant testified, "I fell forward pretty much but I didn't fall to the ground and I twisted around and my radio went flying and that was about it." Claimant stated his back hurt "right off the bat and I went directly in and filled out an accident report on it which is required on any injuries." Claimant acknowledged he did not mention

anything about his left knee on the accident report, and could not recall whether his left knee hurt immediately after the accident. Claimant testified, "I was more concerned with my back because I've had a back injury before and I guess I sort of freaked out about it."

¶ 7 After submitting the accident report, claimant's supervisor asked if he "wanted to go see a doctor right then," but claimant declined. According to claimant, the employer "usually recommended what they call R.I.C.E., rest, ice, compression and elevation, on sprains and strains [at daily safety meetings,] so I thought I'd try that to see if the pain would go away." According to claimant, his "back got to the point where [he] couldn't handle it [so he] went to a walk-in clinic" at Walgreens because he did not have a primary-care physician. Walgreens referred claimant to Alton Memorial Hospital's emergency department where he was seen on January 28, 2011. At the hospital, x-rays of claimant's back were taken and he received a Toradol injection for right flank pain. Claimant testified he mentioned the pain in his left knee "right before [he] left the [hospital's] examination room"; however, the hospital medical records do not reflect complaints of pain in claimant's left knee.

¶ 8 On March 11, 2011, claimant sought treatment with Dr. William R. Bartley, a primary-care physician. Claimant testified that by the time he saw Dr. Bartley, his "back was better but [his] knee was still hurting." Dr. Bartley noted that claimant had some back pain "off and on" but the back pain was "much improved at this point." Upon physical examination of claimant's left knee, Dr. Bartley noted "[c]repitation of his knee, minimal swelling." Claimant acknowledged he had two prior arthroscopic surgeries on his left knee in 1995 and 2005 (both resulting from work accidents), but that just prior to the December 29, 2010, accident, he was not having any problems with his left knee. Dr. Bartley referred claimant to Dr. Randall Rogalsky, an orthopedic surgeon, for further evaluation. At an April 1, 2011, follow-up appointment for

what appears to be coughing and wheezing complaints, claimant reported to Dr. Bartley that his back pain was gone.

¶ 9 On March 21, 2011, claimant met with Dr. Rogalsky, who diagnosed "Clinical internal derangement left knee (recurrent)." Dr. Rogalsky ordered x-rays and a magnetic resonance imaging (MRI) of claimant's left knee. These tests were performed on March 25, 2011. Claimant returned to see Dr. Rogalsky on April 4, 2011, at which time Dr. Rogalsky diagnosed "Internal Derangement left knee."

¶ 10 On April 14, 2011, claimant reported his left knee injury to the employer. The employer immediately sent claimant home until he could be evaluated at Midwest Occupational Medicine (Midwest). On April 15, 2011, claimant saw Dr. Bob Burris, an orthopedic surgeon at Midwest. Dr. Burris was unable to view claimant's MRI results, but told him to follow up with Dr. Rogalsky and placed him on "restrictions of no full squatting and no crawling."

¶ 11 Claimant testified he continued to work at his regular job following the accident. At the time of the arbitration hearing, claimant stated his left knee "is not actually painful [right now] but it locks up on me quite often when I sit in one position for a little while." "[I]f I'm kneeling and go to stand up it sort of pops around and gets locked up sometimes and if I turn or twist I feel pain so I've learned not to do that very often."

¶ 12 Claimant presented Dr. Rogalsky's evidence deposition. According to Dr. Rogalsky, claimant initially complained of "aching pain and snagging in his left knee and had experienced three episodes of giving away" since he tripped over a piece of metal at work. Dr. Rogalsky's physical examination of claimant's left knee on March 21, 2011, revealed "a tenderness at the medial joint line with direct palpation with positive McMurray's and Apley's grind tests, which indicated light damage to the medial meniscus." Claimant also had "mild

crepitation behind his knee cap indicating probable osteoarthritis." Dr. Rogalsky ordered x-rays and an MRI of claimant's left knee.

¶ 13 According to Dr. Rogalsky, "[t]he x-rays demonstrated no distinct abnormality, however, the MRI confirmed medial meniscal abnormalities suggestive of a tear of recurrent nature superimposed on osteoarthritis." At the April 4, 2011, appointment, Dr. Rogalsky recommended conservative treatment, but also gave claimant information regarding knee arthroscopy in case claimant "felt that he needed to have his knee scoped again."

¶ 14 Dr. Rogalsky acknowledged that claimant did not mention any left knee pain in the accident report he filled out for the employer. However, Dr. Rogalsky testified knee pain "can be subtle, and when more major initial injuries are dealt with often patients notice something new a little bit later." He further explained a person suffering from internal derangement may not have immediate symptoms if the tear is small, but that symptoms may develop over time as the tear grows. According to Dr. Rogalsky, "since [claimant] didn't have [left knee pain] before the incident, and then subsequently developed it, it would be logical that the incident was involved in the causation of the recurrent problem." Thus, Dr. Rogalsky concluded, claimant's current condition of ill-being in his left knee was likely causally related to the work accident. Dr. Rogalsky based his opinion on claimant's "normal function prior to the incident in the dark at work, and the fact that he's been having symptoms since that time."

¶ 15 On cross-examination, Dr. Rogalsky agreed that the arthritic changes of the medial compartment, patellar chondromalacia, joint effusion, and post surgical changes of the anterior compartment, as indicated on the MRI, could be consistent with degenerative changes in claimant's knee following his prior left knee arthroscopies. Dr. Rogalsky admitted that the tear of the posterior horn of the medial meniscus, as shown on the MRI, could also be degenerative.

He further agreed that nothing in the MRI conclusively showed trauma occurred to claimant's left knee at the time of the work accident.

¶ 16 On July 11, 2011, Dr. Sherwyn Wayne, an orthopedic surgeon, performed an independent medical examination of claimant on behalf of the employer. Dr. Wayne testified he took a history from claimant, conducted a physical examination, took an x-ray of the left knee, and reviewed claimant's MRI and medical records—including the records of Dr. James Segrist, who performed arthroscopic surgery on claimant's left knee in 2005. Dr. Wayne testified Dr. Segrist's records "showed that [claimant] had preexistent, rather advanced degenerative disease osteoarthritis involving his left knee *** in 2005," and noted a prior left knee arthroscopy. Dr. Wayne further stated the meniscal tear indicated on the March 2011 MRI was not the result of an acute injury. Rather, he explained, the meniscus of a person with a history of arthroscopies involving meniscectomies and debridement, as well as extensive osteoarthritis would always appear ragged and irregular on an MRI. In Dr. Wayne's opinion, claimant had "moderately severe left knee osteoarthritis involving mainly the medial and patellofemoral compartments" which was not causally related to the December 29, 2010, work accident. He explained the basis for his opinion as follows:

"[Claimant's] underlying problem is advanced osteoarthritis of his knee which was established as far back as 2005. There was no indication of any superimposed acute injury, whether that be fracture or internal derangement of the knee, occurring on December 29, 2010. If that had taken place, there would have been acute inflammatory changes in the knee joint such as a joint effusion or hemarthrosis. There would have been marked pain,

there would have been marked limitation of motion. There would have been the inability to bear weight. There was no evidence of any of these acute changes, and it appears that the first mention of any symptoms in the knee was a few months later in March."

¶ 17 Dr. Wayne recommended conservative treatment, testifying that arthroscopic surgery on a person over 40 years old with significant degenerative changes in his knee would "intensify the symptoms, aggravate the arthritis, create a prolonged period of joint swelling and pain" which would increase the likelihood claimant would need a knee replacement. Dr. Wayne testified claimant should avoid activities such as prolonged squatting, crawling, and climbing, but he attributed these restrictions to claimant's preexistent osteoarthritis, not the December 29, 2010, work accident.

¶ 18 On cross-examination, Dr. Wayne acknowledged a preexisting osteoarthritic condition may be aggravated by subsequent events, but he did not feel the December 2010 work accident in this case aggravated claimant's left knee. When asked whether his opinion as to causation or aggravation would change if claimant had complained to coworkers of having left knee pain following the accident, Dr. Wayne said it would not. He explained,

"any individual who has disease of this extent is going to have discomfort in his knee with everyday activity or the type of incident that he described, stepping off of an I-beam or twisting the knee. That is going to cause discomfort. The fact that he had no major complication at that time, no major inflammatory response indicates to me that there was no significant permanent aggravation of that preexisting condition."

¶ 19 On December 30, 2011, the arbitrator issued her decision, finding claimant failed to prove his left knee condition was causally connected to the December 29, 2010, work accident. The arbitrator noted Dr. Rogalsky's causation opinion was based on his belief that claimant delayed reporting his knee injury because his back injury was more serious. However, the arbitrator noted, "[w]hile the medical records show [claimant] was given a shot of Toradol at the emergency room on Jan. 28, 2011, this was almost a month after the accident and was the only treatment given [claimant] for his low back. It does not explain the more than two month delay in the appearance of left knee complaints." While the arbitrator noted Dr. Rogalsky's opinion—as claimant's treating physician—"might be given greater weight than the examining doctor," in this case, she found Dr. Rogalsky, who saw claimant twice, "was not in an appreciably better position to offer a causal connection than Dr. Wayne, who saw him once."

¶ 20 On July 12, 2012, the Commission unanimously affirmed and adopted the arbitrator's decision. On February 20, 2013, the Madison County circuit court reversed and set aside the Commission's decision. Citing *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 797 N.E.2d 665 (2003), the circuit court found "[w]here a causal connection between work and injury has been established, it cannot be negated simply because the injury might also have occurred as a result of some 'normal daily activity.'" The circuit court remanded to the Commission for consideration of prospective medical treatment. On March 15, 2013, the employer filed a motion for reconsideration or, in the alternative, a motion to modify the court's order and strike the remand language. On May 17, 2013, following a hearing on the employer's motions, the court denied the motion for reconsideration but allowed the motion to strike the remand language, modifying its order such that the employer "shall approve and pay for the prospective medical treatment recommended [for claimant's] left knee condition."

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 On appeal, the employer asserts the Commission's denial of benefits to claimant was not against the manifest weight of the evidence and the circuit court erred in reversing the Commission's decision. Specifically, the employer contends the record contains sufficient evidence to support the Commission's finding that claimant failed to prove he injured his left knee at work on December 29, 2010. The employer raises other issues in its brief which were not addressed by the Commission, and thus, are not properly before this court, nor are they necessary for a disposition of this case.

¶ 24 "To obtain compensation under the Act, an injured employee must show by a preponderance of the evidence that he suffered a disabling injury arising out of and in the course of his employment." *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, ¶ 25, 993 N.E.2d 473. "The phrase 'in the course of' refers to the time, place, and circumstances under which the accident occurred. [Citation.] The 'arising out of' component addresses the causal connection between a work-related injury and the employee's condition of ill-being." *Id.* "An injury is said to 'arise out of' one's employment if it 'had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury.'" *Id.* (quoting *Sisbro*, 207 Ill. 2d at 203, 797 N.E.2d at 672). "Whether a claimant's disability is attributable solely to a degenerative process of the preexisting condition or to an aggravation or acceleration of a preexisting condition because of an accident is a factual determination to be decided by the *** Commission." *Sisbro*, 207 Ill. 2d at 205-06, 797 N.E.2d at 673.

¶ 25 On appeal, we review the Commission's decision, not the circuit court's judgment.

Dodaro v. Illinois Workers' Compensation Comm'n, 403 Ill. App. 3d 538, 543, 950 N.E.2d 256, 260 (2010). "[I]t is solely within the province of the Commission to judge the credibility of witnesses, to draw reasonable inferences from the testimony and to determine the weight evidence is to be given." *Gano Electric Contracting v. Industrial Comm'n*, 260 Ill. App. 3d 92, 95, 631 N.E.2d 724, 727 (1994). " 'We cannot reject or disregard permissible inferences drawn by the Commission simply because different or conflicting inferences might also reasonably be drawn from the same facts, nor can we substitute our judgment for that of the Commission on such matters unless its findings are contrary to the manifest weight of the evidence.' " *National Freight*, 2013 IL App (5th) 120043WC, ¶ 26, 993 N.E.2d 473 (quoting *Zion–Benton Township High School District 126 v. Industrial Comm'n*, 242 Ill. App. 3d 109, 113, 609 N.E.2d 974, 978 (1993)). A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly apparent. *Id.* "The appropriate test is not whether this court might have reached the same conclusion, but whether the record contains sufficient evidence to support the Commission's determination." *Kawa v. Illinois Workers' Compensation Comm'n*, 2013 IL App (1st) 120469WC, ¶ 78, 991 N.E.2d 430.

¶ 26 Here, the Commission's finding with respect to claimant's failure to prove causal connection between the work accident and the condition of ill-being in his left knee is not against the manifest weight of the evidence.

¶ 27 Claimant's testimony established he did not report a left knee injury to the employer until April 14, 2011—approximately 3 1/2 months after the accident occurred. Although claimant testified he mentioned his left knee pain "right before [he] left the [hospital's] examination room" on January 28, 2011, the hospital's record for that visit fails to support claimant's assertion. The first documentation of left knee pain is in Dr. Bartley's March 11,

2011, report. Further, claimant testified he did not report his left knee pain to the employer earlier because his back pain was his overriding concern. However, as pointed out by the employer, claimant declined the employer's offer of immediate medical treatment, he failed to seek any medical care for his back for nearly a month after the accident and then, only on a single occasion, and he continued to work in his regular capacity for approximately four months after the accident. This evidence appears to cast doubt on claimant's argument that his back symptoms were so severe as to mask his co-existent left knee symptoms.

¶ 28 Regarding the medical evidence presented, Dr. Rogalsky opined that the current condition of ill-being in claimant's left knee was attributable to the December 29, 2010, work accident. However, Dr. Rogalsky's causation opinion was based on the history relayed to him by claimant, specifically that claimant was asymptomatic prior to the accident but had since developed pain in his left knee. On the other hand, Dr. Wayne opined that the current condition of ill-being in claimant's left knee was attributable solely to degenerative changes due to advanced osteoarthritis. Dr. Wayne's causation opinion was based on claimant's available medical records, including his March 2011 MRI and Dr. Segrist's 2005 medical report following claimant's second arthroscopy—which established claimant suffered from advanced osteoarthritis as early as 2005.

¶ 29 Further, while Dr. Rogalsky opined a person suffering internal derangement of the knee may not experience immediate symptoms, Dr. Wayne testified that if claimant had suffered an injury, such as a fracture or internal derangement of his left knee, he would have noticed acute inflammatory changes, marked pain, marked limitation of movement, and an inability to bear weight. In claimant's case, however, no left knee complaints were documented until nearly three months after the work accident.

¶ 30 We agree with the employer that this case simply involves the resolution of two competing medical causation opinions. The Commission found Dr. Wayne's causation opinion, which he based on medical records dating back to 2005, more persuasive than Dr. Rogalsky's which was based solely on the history provided by claimant. The Commission concluded claimant failed to prove his left knee condition was causally related to the December 29, 2010, work accident. It is well established that resolution of conflicting medical testimony falls within the province of the Commission. *Sisbro*, 207 Ill. 2d at 206, 797 N.E.2d at 673. Based on the record before us, we cannot say that an opposite conclusion from that reached by the Commission is clearly apparent. Nor is there any indication the Commission misapplied the law, as suggested by the circuit court. As pointed out by the employer, there is no indication the Commission found, as an initial matter, that causation had been established but then denied compensability because claimant's "normal everyday activity" could have resulted in his injury. Such a finding, had it been made, might indeed run contrary to the supreme court's decision in *Sisbro*, as suggested by the circuit court. See *Sisbro*, 207 Ill. 2d at 208-09, 797 N.E.2d at 675 (disagreeing with the employer's contention "that, even when a work-related accidental injury is shown to be an *actual* causal factor in bringing about an employee's disabling condition, recovery should be denied if normal daily activity *could have* brought on claimant's disabling condition"). (Emphasis in original.) However, the Commission here simply found claimant failed to establish the accident caused an injury to his left knee.

¶ 31 III. CONCLUSION

¶ 32 For the reasons stated, we reverse the judgment of the circuit court and reinstate the Commission's decision.

¶ 33 Judgment of the circuit court reversed. Commission's decision reinstated.