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2014 IL App (5th) 130592WC-U

Order filed September 18, 2014

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIFTH DISTRICT

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SUVAD KAJTAZOVIC,	)	Appeal from the Circuit Court
	)	of the Third Judicial Circuit,
	)	Madison County, Illinois.
Appellant,	)	
	)	
v.	)	Appeal No. 5-13-0592WC
	)	Circuit No. 13-MR-1
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, <i>et al.</i> , (AFS-Keystone, Inc.,	)	Honorable
Appellees).	)	Donald M. Flack,
	)	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 psychiatric ill-being was not causally related to an industrial accident; (2) the claimant reached MMI on December 23, 2010, and was no longer entitled to reimbursement of medical expenses after that date; and (3) the claimant was entitled to PPD benefits equal to 37.5% loss of the use of the left leg were not against the manifest weight of the evidence.

¶ 2 The claimant, Suvad Kajtažovic, filed an application for adjustment of claim under the Workers' Compensation Act (820 ILCS 305/1 *et seq.* (West 2010)) alleging injuries to his left leg occurring as the result of an industrial accident on December 8, 2007. He reported that a large steel part struck his left leg, fracturing the left tibia and fibula. On March 29, 2009, the claimant

amended his application to allege that he had also struck his head while falling and as a result suffered certain psychiatric injuries. An arbitration hearing was held on February 29, 2012, after which the arbitrator found that: (1) the claimant sustained accidental injuries to his left leg arising out of and in the course of his employment on December 8, 2007; (2) the claimant's current psychiatric condition of ill-being was not causally related to the December 8, 2007, industrial accident; (3) the claimant reached maximum medical improvement (MMI) regarding his left leg on December 23, 2010, and was no longer entitled to reimbursement of medical expenses after that date; (4) the claimant was entitled to permanent partial disability (PPD) benefits equal to 37.5% loss of use of the left leg for a total PPD award of \$34,922.72; (5) the claimant was entitled to temporary total disability (TTD) benefits resulting from the left leg injury for 71 and 6/7 weeks for a total TTD benefit of \$34,583.41; and (6) the employer, having previously paid TTD benefits of \$68,972.80, was entitled to a credit of \$34,389.39 for overpayment of TTD benefits to be applied to the PPD award. 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 Madison County, which confirmed the decision of the Commission. The claimant filed a timely appeal with this court.

¶ 3

### ISSUES

¶ 4 The claimant raises the following issues on appeal:

- A. Whether the Commission's finding that the claimant's current condition of psychiatric ill-being was not causally related to the December 8, 2007, accident was against the manifest weight of the evidence;

B. Whether the Commission's finding that the claimant was entitled to PPD benefits equal to 37.5% loss of use of the left leg was against the manifest weight of the evidence; and

C. Whether the Commission's finding that the claimant reached MMI on December 23, 2010, and was no longer entitled to reimbursement of medical expenses after that date was against the manifest weight of the evidence.

¶ 5

#### FACTS

¶ 6 The following factual recitation is based upon the evidence presented at the arbitration hearing conducted on March 21, 2012. The evidence included the testimony of the claimant, witnesses to the occurrence, and the claimant's written medical records.

¶ 7 The claimant testified, with the aid of an interpreter, that he was a Bosnian immigrant who came to the United States in 1999. He had worked several jobs in the area and was employed by ASF-Keystone (the employer) at its facility in Granite City, Illinois, as a laborer in the molding department. On December 8, 2007, the claimant was working when a large piece of equipment rolled onto his left leg and side. Witnesses reported the equipment struck the claimant on his left leg and side, but not his head. Witnesses also reported that the claimant did not strike his head on the concrete and that he did not lose consciousness.

¶ 8 The claimant was transported to the emergency department of Gateway Regional Medical Center in Granite City where tests revealed fractures to the tibia and fibula. Medical records did not contain any report of the claimant striking his head or losing consciousness. The claimant was immediately transferred to St. Louis University Hospital, where he underwent debridement and irrigation procedures. On December 10, 2007, the claimant underwent an open reduction internal fixation to stabilize the fractures to the tibia and fibula. The claimant remained hospitalized until December 17, 2007, at which time he was released with instruction to seek

care from the orthopedic clinic at the hospital. Again, the medical records contain no reference to head injuries or the claimant's report of losing consciousness during the accident.

¶ 9 The claimant was assigned to the care of Dr. John Watson and Dr. David Kieffer at the St. Louis University orthopedic clinic. Dr. Watson prescribed a program of rehabilitation and physical therapy beginning in February 2008. On June 5, 2008, Dr. Watson noted that the claimant needed to become more aggressive with the physical therapy, work harder at the strengthening exercises and discontinue the use of a cane.

¶ 10 On June 12, 2008, the claimant was examined at the request of the employer by Dr. Richard Katz, a board-certified physiatrist, who had extensive experience with similar lower extremity injuries. Dr. Katz reported a slightly reduced range of motion, mild swelling, and heel pain. He noted no instability, weakness or atrophy. Dr. Katz opined that the claimant was receiving proper care for the extent of his injuries.

¶ 11 On August 28, 2008, Dr. Watson reported that the claimant had stopped physical therapy without notice. He also reported that his last examination of the claimant revealed no swelling, a normal range of motion, and that the fractures had properly healed. Dr. Watson opined that, based upon his last examination, the claimant could reasonably progress to full weight bearing and should have no restrictions on his overall activity.

¶ 12 On October 3, 2008, the claimant underwent a Functional Capacity Evaluation (FCE) at the request of Dr. Watson. The therapist conducting the FCE reported that: (1) the claimant refused to completely participate in the evaluation; (2) the claimant's subjective pain report was out of proportion with his appearance; (3) the claimant displayed an obvious failure to give maximum effort; and (4) the claimant appeared to be engaging in symptom magnification.

¶ 13 On November 3, 2008, the claimant was again examined at the request of the employer by Dr. Katz, who reported that the claimant appeared to have normal function of his left leg,

knee, calf, and ankle. Dr. Katz also reported that the claimant walked comfortably and briskly with a normal gait. He opined that the claimant's continuing complaints of left leg pain were exaggerated and not commensurate with his current condition. Dr. Katz opined that the claimant was at MMI and capable of returning to his prior regular work duties without restrictions.

¶ 14 In a subsequent deposition, Dr. Katz testified that during his two examinations of the claimant (June 12, 2008, and November 3, 2008) the claimant made no complaints of head pain and gave no report of a head injury as a result of the December 8, 2007, accident.

¶ 15 On December 16, 2008, the claimant applied for social security disability benefits. He testified that since that time he has not sought employment.

¶ 16 On January 27, 2009, the claimant was examined by Dr. Kieffer for complaints of instability in the left leg. An MRI was ordered which suggested to Dr. Kieffer a possible medial meniscus tear. Dr. Kieffer performed an arthroscopic evaluation surgery on March 17, 2009. Dr. Kieffer reported that all tissue and ligaments were intact. However, he performed some limited abrasion arthroplasty while performing the exploratory procedure.

¶ 17 On March 20, 2009, the claimant sought treatment from Dr. Sanjeev Rao, a staff psychiatrist at St. Anthony's Medical Center in St. Louis. The claimant reported to Dr. Rao complaints of depression, insomnia, and emotional distress which the claimant described as having commenced at the time of his leg injury. The claimant also told Dr. Rao that when the December 8, 2007, accident happened he struck his head on the concrete floor and lost consciousness. He told Dr. Rao that he had severe headaches ever since the industrial accident.

¶ 18 Dr. Rao diagnosed depressive disorder, and based upon the claimant's reported history, opined that the claimant's depressive disorder was causally related to the December 8, 2007, accident and would be consistent with post-concussion syndrome. Dr. Rao's treatment notes indicate that he treated the claimant for psychiatric symptoms for approximately 30 months

beginning in March 2009. This treatment included a period of hospitalization from July 1, 2009, to July 6, 2009, for suicidal ideations. However, Dr. Rao also reported that he actually saw the claimant only 15 times during the 30 months, and usually for the purpose of the claimant obtaining prescriptions. Dr. Rao also acknowledged that the claimant was often vague and evasive, that he often refused to complete diagnostic inventories and refused non-prescription based psychotherapy. Dr. Rao also reported that a CT scan of the claimant's brain and head performed in July 2009 demonstrated no abnormalities.

¶ 19 On May 5, 2009, and June 2, 2009, the claimant was again examined by one of his orthopedists, Dr. Kieffer, who reported on both occasions that the claimant complained of left knee pain and was still using a cane. Dr. Kieffer found no swelling, no effusion, and a normal full range of motion. Dr. Kieffer suggested that the claimant discontinue the use of the cane and return to physical therapy.

¶ 20 On May 5, 2009, the claimant was videotaped engaged in activities in his yard, engaged in various activities such as playing with a young child, including hoisting the child on his shoulders, swinging the child around by the arms, and chasing the child. The videotape also displayed the claimant engaged in yard work including bending, pulling weeds, and using a gas powered weed trimmer.

¶ 21 Physical therapy records entered into evidence show repeated references to the claimant's failure to cooperate in the treatment, repeated instances of apparent symptom magnification and reports of pain not consistent with objective pathologies. These records indicate that the claimant ceased all physical therapy on July 23, 2009.

¶ 22 On August 13, 2009, the claimant was examined at the request of the employer by Dr. Lyndon Gross, a board-certified orthopedic surgeon. Dr. Gross found no effusion or swelling, full range of motion and no instability in the left leg. He interpreted recent x-rays of the left leg

to reveal a healed fracture with proper alignment. He noted a mild, non-disabling weakness in the ankle consistent with the fracture. Dr. Gross opined that the claimant's symptoms were exaggerated and out of proportion with all objective findings, the nature of the injury, and the claimant's medical treatment. He discounted the claimant's reported pain and other left leg symptoms as symptom magnification and/or malingering. He opined that the claimant was at MMI and in need of no further medical, orthopedic or physical therapy treatment, and was fully capable of all manual labor with no ladder climbing as the only necessary restriction. Dr. Gross further opined that the surgical procedure performed by Dr. Kieffer on March 17, 2009, was for the repair of a pre-existing congenital condition neither caused nor aggravated by the December 8, 2007, accident.

¶ 23 On November 9, 2009, Dr. Kieffer noted that the claimant continued to report left leg pain and continued to fail to attend rehabilitation. Based upon these observations, Dr. Kieffer opined that the claimant was at MMI.

¶ 24 On December 9, 2009, the claimant was awarded social security disability benefits. He testified that, based on these benefits, he had never sought to return to work.

¶ 25 The claimant was examined at his attorney's request by his family physician, Dr. Thomas Musich. Dr. Musich opined that the claimant was unable to perform labor due to the injury to his left leg and his psychiatric condition. In his deposition, Dr. Musich acknowledged that orthopedic and psychiatric pathologies were outside his area of practice, and that Dr. Gross was well regarded in his profession. Dr. Musich also admitted that poor and inconsistent effort in physical therapy could explain the claimant's apparent lack of postoperative progress, and that the claimant's reported complaints could be explained by symptom magnification or malingering. Assuming such deliberate noncompliance with prescribed physical therapy and symptom

magnification, Dr. Musich agreed that claimant would have reached MMI at the time of his noncompliance.

¶ 26 On January 12, 2010, and January 19, 2010, the claimant was examined and evaluated at the request of the employer by Dr. Wayne Stillings, a board-certified psychiatrist. Dr. Stillings opined that Dr. Rao's psychiatric evaluation of the claimant was incomplete because it lacked a complete record review and any psychological diagnostic testing. He further opined that, without documentation of a head injury, the diagnosis of post-concussion syndrome was extremely problematic. Dr. Stillings noted the claimant's history of noncompliance and exaggeration and observed the same behavior when he examined the claimant. Dr. Stillings diagnosed a preexisting personality disorder with tendencies to magnify illness, exaggerate symptoms and manipulate people and situations to his benefit. He further opined that the claimant had no motivation to return to work, had adopted an invalid role for secondary gain and was unlikely to cease his work injury complaints until his compensation issues were resolved in his favor. Dr. Stillings opined that the claimant's accidental injury on December 8, 2007, had neither caused, contributed, nor aggravated his psychological condition. From a psychiatric standpoint, according to Dr. Stillings, the claimant was capable of unrestricted duty. He even opined that returning to work would be psychologically therapeutic.

¶ 27 On April 8, 2010, the claimant was again examined at the request of the employer by Dr. Gross. Dr. Gross again opined that all the claimant's reports of pain and incapacity were well out of proportion to objective evaluations. He again attributed the claimant's subjective complaints to symptom magnification and malingering.

¶ 28 On February 22, 2011, the claimant was treated at the suggestion of Dr. Kieffer by Dr. Adnan Cutuk, a board-certified orthopedic surgeon. Dr. Cutuk testified in his deposition that the claimant was noncompliant with all treatment recommendations. He testified that, on one

occasion, the claimant asked him about long term disability. Dr. Cutuk told the claimant that, if he complied with physical therapy treatment as prescribed, he should be able to regain strength and have a good functional outcome. Dr. Cutuk opined that the claimant's condition would have resolved if he had committed to therapy.

¶ 29 On April 21, 2011, the claimant was again examined at the request of the employer by Dr. Gross. Dr. Gross saw no objective findings consistent with the claimant's subjective complaints. In fact, Dr. Gross indicated in his report that the claimant showed up for this examination with a knee brace positioned around his calf. Dr. Gross opined that the claimant was still at MMI and that his previous restriction of no ladder climbing had been giving the claimant the benefit of the doubt regarding his ankle weakness. Dr. Gross was no longer certain that even that mild restriction was necessary. However, in order to rule out unexplained radiculopathy, Dr. Gross referred the claimant to Dr. David Peeples, a neurologist, for a neurological examination.

¶ 30 On May 26, 2011, Dr. Peeples performed diagnostic neurological testing on the claimant. He found all test results to be within the normal range. Dr. Peeples also reported that the claimant gave incomplete and inconsistent efforts during the neurological testing.

¶ 31 The claimant's supervisor testified that the employer made the claimant a written offer of a job within the no ladder climbing restriction imposed by Dr. Gross. The claimant refused the offer.

¶ 32 At arbitration, the claimant was using a crutch and a knee brace. He testified that he was currently unable to walk or stand for more than a few minutes. He testified that his wife works and he stays home to take care of their two children. He admitted that he was still in possession of a valid commercial driver's license. He testified that he continued to take medication for pain and depression.

¶ 33 The arbitrator found that the claimant was involved in a work-related accident on December 8, 2007, and suffered injuries to his left leg as a result. However, the arbitrator found no credible evidence to establish that the claimant suffered a head injury or concussion as a result of that accident. Consequently, the arbitrator denied all claims for benefits and medical treatment relating to the claimant's post-concussion syndrome or related psychiatric conditions of ill-being. The arbitrator further found that the claimant had reached MMI no later than December 23, 2010, which was the date he ceased to cooperate with prescribed physical therapy. The arbitrator further noted that prior to that date, on October 26, 2010, Dr. Watson had discharged the claimant due to non-compliance with his treatment plan. Moreover, the arbitrator noted that, to the extent that any aspect of the claimant's condition of ill-being was not attributable to symptom magnification or malingering, both Dr. Gross and Dr. Cutuk identified the claimant's non-compliance with the physical therapy treatment plan as the significant contributing factor.

¶ 34 Regarding medical treatment, the arbitrator found no basis for awarding any medical treatment expenses attributable to the claimant's psychiatric condition, and also found no basis for awarding any medical expenses incurred after December 23, 2010, the date of MMI.

¶ 35 Regarding TTD benefits, the arbitrator awarded three periods of benefits: (1) that date following the initial injury until August 28, 2008, which was the date Dr. Watson opined that the claimant could return to work without restrictions; (2) March 17, 2009, the date of the left knee arthroscopic exploratory surgery, until August 13, 2009, the date Dr. Gross opined the claimant could return to work with only the no ladder climbing restriction; and (3) July 2, 2010, until September 28, 2010, the date of the claimant's last appointment with Dr. Watson. The arbitrator found that the employer had overpaid the claimant for additional periods of TTD benefits and gave the employer a credit for the overpayment.

¶ 36 Regarding the permanent nature and extent of the claimant's injury to his left leg, the arbitrator found the claimant's loss of use of the left leg to be at 37.5%. The arbitrator noted the severity of the initial injury and the fact that it involved multiple compound fractures. The arbitrator also noted the difficulty in establishing a permanency award based upon the "substantial degree of exaggeration" and his "lack of credibility."

¶ 37 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 Madison County, which confirmed the Commission's decision. The claimant then filed a timely appeal to this court.

¶ 38 **ANALYSIS**

¶ 39 1. Causation

¶ 40 In this appeal, the claimant maintains that he was entitled to an award of permanent total disability based upon a psychological condition of ill-being he maintains resulted from a concussion he incurred when he struck his head on the concrete floor during the industrial accident on December 8, 2007. He points out that a psychological injury is compensable if it results from an accidental injury. *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 64 (1982). He further notes that a causal connection between a condition of ill-being and a work-related accident can be established by a chain of events wherein the claimant has a history of prior good health, and, following a work related accident, is unable to carry out his duties because of a newly manifested physical or mental condition. *BMS Catastrophe v. Industrial Comm'n*, 245 Ill. App. 3d 359, 365 (1993). The claimant maintains that he has established a causal connection between his mental condition of ill-being and the December 8, 2007, industrial accident through Dr. Rao's testimony. He posits that the Commission's acceptance of Dr.

Stillings' psychiatric opinion over that of Dr. Rao's on the question of causation was against the manifest weight of the evidence. We disagree.

¶ 41 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).

¶ 42 In this case, the Commission's finding that the claimant's current condition of mental 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 Dr. Rao's opinion was based solely on the claimant giving him a history of striking his head on the

concrete, a fact which was contravened by the overwhelming weight of the evidence; and (2) Dr. Stillings' opinion that Dr. Rao's diagnosis was suspect given the lack of independent and contemporaneous documentation of a head injury on December 8, 2007. In addition, Dr. Rao's opinion was undermined by the fact that Dr. Rao found the claimant to be vague and evasive and the fact that the claimant refused to complete a depression inventory and refused Dr. Rao's recommended psychotherapy.

¶ 43 Simply put, the Commission found that the claimant did not prove that he suffered a concussion on December 8, 2007. The record contains statements from coworkers who witnessed the accident who did not report the claimant striking his head. The medical records from two hospitals contain no reference to the claimant suffering a concussion. In addition, none of the treating physician's records contain any indication that the claimant suffered a concussion on December 8, 2007. Dr. Rao's diagnosis of "depressive disorder" consistent with "post-concussion syndrome" can only be valid if the Commission found that the claimant had suffered a concussion. It found that the totality of the credible evidence did not support that factual conclusion.

¶ 44 Based on this record, the Commission's finding that the claimant's psychological and medical conditions as first diagnosed by Dr. Rao on March 20, 2009, were not causally related to the industrial accident of December 8, 2007, was not against the manifest weight of the evidence.

¶ 45 **2. PPD Benefits**

¶ 46 The claimant next maintains that the Commission erred in failing to award PPD disability benefits greater than 37.5% loss of the use of his left leg. Without citation to authority, he suggests that the fact that the claimant receives social security disability benefits stands as proof that he is permanently and totally disabled. It stands to reason, he maintains, that his disability attributable to his left leg must be greater than that established by the Commission. We disagree.

¶ 47 The nature and extent of a claimant's permanent injuries as the result of an industrial accident is a question of fact for the Commission to determine and its decision will not be overturned on appeal unless it is against the manifest weight of the evidence. *Freeman United Mining Co. v. Industrial Comm'n*, 318 Ill. App. 3d 170, 175 (2000). Here, there was no question that the claimant suffered significant multiple compound fractures to his left leg on December 8, 2007. However, it was the consensus of all treating and examining physicians that the claimant's treatment was a success and that his condition, by all objective standards, had improved to a significant degree. Given this record, it cannot be said that the Commission erred in finding that the claimant's permanent loss of use of his left leg was limited to 37.5%. Indeed, it should be noted that the arbitrator, in awarding that amount, seemed to indicate that the claimant's lack of credibility may have made even that amount somewhat generous.

¶ 48 3. MMI

¶ 49 The claimant lastly maintains that the Commission's finding that he reached MMI on December 23, 2010, was against the manifest weight of the evidence. In doing so, he further maintains that the Commission's award of TTD benefits terminating on that date was likewise against the manifest weight of the evidence. It is well-settled that the period of temporary total incapacity runs from the date the claimant's injuries as a result of an industrial accident totally incapacitates him from work until the date he reaches MMI. *Lukasik v. Industrial Comm'n*, 124 Ill. App. 3d 609, 614 (1984). The question of when a claimant is totally incapacitated from work and when he has reached the point where medical treatment will not advance his ability to recover any further from his injuries is a question of fact for the Commission to determine and that decision will not be overturned on appeal unless it is against the manifest weight of the evidence. *Id.*

¶ 50 Here, the Commission's award of TTD and the date upon which the claimant reached MMI are supported by the record. The Commission based its MMI determination on the medical expert testimony of Drs. Watson and Gross. The record contains several instances of treating and examining medical personnel opining that the claimant was engaged in a pattern of symptom magnification and malingering. In spite of this pattern, the Commission was able to parse out the time frame during which the claimant appeared to be objectively unable to work and awarded TTD benefits for those periods. The Commission noted that Dr. Watson's opinion that December 23, 2010, was the date upon which the claimant reached MMI was based primarily on the claimant's lack of cooperation with his prescribed treatment program. Based upon this record, it cannot be said that the Commission's determinations as to TTD and MMI were against the manifest weight of the evidence.

¶ 51 CONCLUSION

¶ 52 For the foregoing reasons, we affirm the judgment of the circuit court of Madison County which confirmed the decision of the Commission.

¶ 53 Affirmed.