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2016 IL App (3d) 150513WC-U

Order filed April 28, 2016

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

URS ENERGY & CONSTRUCTION, INC.,)	Appeal from the Circuit Court
(FORMALLY A SUBSIDIARY OF URS)	of the Tenth Judicial Circuit,
CORPORATION),)	Tazewell County, Illinois
)	
Appellant,)	
)	
v.)	Appeal No. 3-15-0513WC
)	Circuit No. 14-MR-197
)	
ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION, <i>et al.</i> , (Mark Cook,)	David J. Dubicki,
Appellees).)	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's left shoulder condition and need for left shoulder surgery was causally connected to his employment was not against the manifest weight of the evidence.

¶ 2 The claimant, Mark Cook, filed an application for adjustment of claim under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2012)), seeking benefits for injuries to his left arm and left elbow which he claimed were caused or aggravated by work-

related repetitive trauma he sustained while he was employed by respondent URS Energy and Construction, Inc. (employer). After conducting a hearing, an arbitrator found that the claimant had proven a work-related injury to his left elbow arising out of and in the course of his employment with a manifestation date of February 4, 2014. The arbitrator also found that the claimant's current condition of ill-being in his left shoulder and his need for surgery on that shoulder was causally related to the claimant's February 4, 2014, work accident. The arbitrator awarded the claimant temporary total disability (TTD) benefits, medical expenses, and prospective medical care, including left shoulder surgery.

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

¶ 4 The employer then sought judicial review of the Commission's decision in the circuit court of Tazewell County. In its brief to the circuit court, the employer conceded that the claimant had suffered a work-related injury to his left elbow. However, the employer disputed the Commission's findings that the claimant's left shoulder condition and his need for left shoulder surgery were causally related to his employment. The employer argued that it should not be required to authorize and pay for such surgery. The circuit court confirmed the Commission's ruling.

¶ 5 This appeal followed.

¶ 6 **FACTS**

¶ 7 The claimant worked for the employer as a Material Handler. He worked eight hours per day, five days per week. His job duties included driving a forklift 6 hours per day, driving a shuttle 1.5 hours per day, and using a computer for approximately 30 minutes per day. While

driving the forklift, the claimant had to steer exclusively with his left hand because he had to operate the forklift's hydraulic controls with his right hand. The claimant had to drive forklifts in and out of the warehouse and in and around aisles, which required intensive use of the steering wheel with the his left hand.

¶ 8 In October 2012, the claimant began experiencing discomfort in his left elbow. On or around February 1, 2013, the claimant's symptoms substantially increased, prompting him to seek medical treatment. On February 4, 2013, the claimant treated with Dr. Generoso Sison, a family physician. Dr. Sison diagnosed left lateral epicondylitis,¹ which he opined was caused by the claimant's "[c]onstant steering of the hand wheel with his left [upper extremity]." Dr. Sison took the claimant off work through February 11, 2013, and ordered him to avoid using his left upper extremity to steer a steering wheel until he was pain free. In the ensuing weeks, the claimant's pain worsened during work activities and continued to recur despite conservative treatment. On March 4, 2013, Dr. Sison recommended an orthopedic evaluation and physical therapy and took the claimant off work.

¶ 9 On April 29, 2013, the claimant saw Dr. Jeffrey Garst, an orthopedic surgeon. Dr. Garst diagnosed left lateral epicondylitis and ordered an MRI, which revealed a small tear of the common extensor tendon with mild edema in the adjacent tissue, elbow joint effusion, and mild tendinosis in the distal biceps. When the claimant did not improve with physical therapy, Dr. Garst recommended surgery.

¶ 10 On October 2, 2013, Dr. Donald Mitzelfelt, an orthopedic surgeon, performed a left

¹ "Lateral epicondylitis," commonly known as "tennis elbow," is an inflammation of the tendons that join the forearm muscles on the outside of the elbow which causes pain and tenderness in the elbow and poor grip strength.

lateral epicondylar release with repair and placement of an Amnio Matrix graft. On November 21, 2013, the claimant returned to Dr. Mitzelfelt for a postoperative follow up examination. At that time, the claimant was off work and undergoing physical therapy. Dr. Mitzelfelt's November 21, 2013, medical record indicates that the claimant was complaining of left shoulder stiffness and medial elbow pain. Dr. Mitzelfelt continued the claimant's physical therapy and work restrictions.

¶ 11 The claimant saw Dr. Mitzelfelt again on January 16, 2014. Dr. Mitzelfelt's medical record of that visit reflects that the claimed had "return[ed] for a follow-up visit for left shoulder pain" which had "developed spontaneously *** several months ago." Dr. Mitzelfelt noted that the claimant reported that the pain in his shoulder "had been going on for a while but really intensified after coming out of the sling following surgery on his elbow." According to Dr. Mitzelfelt's record, the claimant's left shoulder pain was aggravated when the claimant lifted his arm above his head, elevated his arm, or performed activities of daily living, and the claimant had "not found relief from any prior treatments." Dr. Mitzelfelt concluded that the claimant was suffering from "[p]ersistent and progressive discomfort" in his left shoulder that "interfere[d] with activities of daily living and recreational activities." Dr. Mitzelfelt diagnosed impingement syndrome and ordered an MRI of the claimant's left shoulder. He discussed treatment options with the claimant (including both surgery and various conservative measures) and kept the claimant off work.

¶ 12 On February 3, 2014, an MRI was performed on the claimant's left shoulder. The MRI revealed subacromial bursitis, a type II SLAP tear,² and a partial tear of the rotator cuff³ with

² "SLAP" is an acronym for "superior labral tear from anterior to posterior." A SLAP tear occurs when there is damage to the superior (uppermost) area of the labrum (the cartilage attached to the

tendinosis.

¶ 13 The claimant returned to Dr. Mitzelfelt on February 7, 2014, with continued complaints of left shoulder pain. Dr. Mitzelfelt's assessment was impingement syndrome of the left shoulder. Dr. Mitzelfelt noted in his medical record that the claimant's left shoulder pain had not improved with physical therapy and was interfering with recreational activities, activities of daily living, and the claimant's ability to work. Dr. Mitzelfelt discussed the February 3, 2014, MRI results with the claimant, which Dr. Mitzelfelt noted revealed subacromial bursitis and a type II SLAP tear. Dr. Mitzelfelt referred the Claimant to Dr. Garst "to discuss surgical [treatment] options."

¶ 14 The claimant saw Dr. Garst on February 10, 2014. Dr. Garst's medical record of that visit notes that, although Dr. Garst had seen the claimant for his left elbow problem in August of 2013, "this was [his] initial visit with [the claimant] for this particular problem at his left shoulder." According to Dr. Garst's medical record, the claimant reported noticing problems with his left shoulder after his October 2013 left elbow surgery. Although the claimant was "not sure" if his shoulder pain predated his left elbow surgery, "after the elbow surgery *** he noticed a lot more left shoulder pain to the point where he is having trouble doing overhead activities." Dr. Garst noted that the claimant had already seen Dr. Mitzelfelt's physician's assistant and that "surgery was recommended." He further noted that the claimant had a cervical spine fusion done in 2009 and stated that, for that reason, the claimant's prior medical history was "important." Dr. Garst agreed that the February 3, 2014, MRI showed a labral tear and

rim of the shoulder socket that helps keep the ball of the joint in place).

³ The rotator cuff is a group of tendons and muscles that support the shoulder joint and allow for complete movement while keeping the ball of the arm bone in the shoulder socket.

partial rotator cuff tear. He thought that the MRI also revealed evidence of “probable acromioclavicular joint arthritis.” Dr. Garst diagnosed “[l]eft shoulder partial rotator cuff tear with labral tear, impingement, and probable acromioclavicular joint arthritis” and recommended a left shoulder arthroscopy.

¶ 15 Dr. Mitzelfelt testified by way of an evidence deposition conducted on January 10, 2014. During his deposition, Dr. Mitzelfelt stated that, after his left elbow surgery, the claimant started to have medial elbow pain and left shoulder stiffness. When asked what these symptoms were related to, Dr. Mitzelfelt responded,

“[i]t’s just from the – you get a lateral epicondylitis and you overuse your shoulder and usually the medial elbow and then after surgery you have to protect the lateral elbow so you’re just kind of using the shoulder so you get some tenderness and inflammation there.”

The claimant’s counsel then asked Dr. Mitzelfelt whether he believed that the claimant’s left shoulder symptoms were “something that’s related to the surgery itself.” Dr. Mitzelfelt answered, “[w]ell, it’s related to activities after the surgery.” When the claimant’s counsel asked Dr. Mitzelfelt later in the deposition whether it was his medical opinion that the claimant’s medial elbow and shoulder pain were “due to an overuse syndrome,” Dr. Mitzelfelt’s initial response was “[w]ell, I think that’s – yeah.” However, Dr. Mitzelfelt immediately qualified this opinion, stating:

“I don’t think that—it’s overuse because you can’t use this and so these get a little flared up, but it shouldn’t be anything that doesn’t go away with therapy. ***
There’s nothing on the MRI that showed anything on the elbow and the shoulder wasn’t bothering him before. I think a lot of it is you’ve got a splint on and you

have muscle spasm and they get tight and they ache, but that's something that should go away with therapy.”

¶ 16 At the employer's request, Dr. Lawrence Li, an orthopedic surgeon, reviewed the claimant's medical records and offered a medical opinion regarding the claimant's left elbow injury. Dr. Li opined that the claimant's left elbow condition was preexisting and that the claimant simply had a manifestation of symptoms during work. Dr. Li did not offer an opinion as to the cause of the claimant's left shoulder condition.

¶ 17 During the arbitration hearing, the claimant testified that he noticed some “pretty severe shoulder pain” approximately three to four weeks after his elbow surgery (*i.e.*, in November 2013), when he stopped wearing an arm sling. He stated that he did not notice this pain while he was wearing the sling. The claimant testified that his left shoulder pain has gotten progressively worse since November 2013. He noted that, after seeing the MRI of his left shoulder, Dr. Mitselfelt recommended surgery, which he recommended be performed by Dr. Garst.

¶ 18 The arbitrator found that the claimant sustained an accidental injury to his left elbow which arose out of and in the course of his employment with the employer and which manifested itself on February 4, 2013. The arbitrator found that the current condition of ill-being in the claimant's left elbow was causally related to the work accident of February 4, 2013.

¶ 19 The arbitrator also found that the claimant's left shoulder condition and his need for left shoulder surgery as prescribed by Dr. Garst was causally related to the claimant's February 4, 2013, work accident. In making this finding, the arbitrator relied upon: (1) the claimant's testimony that he started to have consistent left shoulder complaints three to four weeks after his October 2013 left elbow surgery; (2) Dr. Mitselfelt's “opinion” that the claimant's left shoulder soreness and swelling “was due to overuse following the [claimant's] left elbow surgery”; (3) the

fact that “[n]o contrary medical opinion was offered into the record”; (4) the February 3, 2014, MRI of the claimant's left shoulder, which demonstrated subacromial bursitis and a type II SLAP tear; and (5) Dr. Garst’s recommendation of left shoulder arthroscopy to treat that condition.

¶ 20 The arbitrator awarded the claimant TTD benefits from March 4, 2013, through February 20, 2014, a period of 50 and 4/7 weeks. Moreover, based on his findings of accident and causation, the arbitrator found that the medical treatment the claimant received for his left lateral epicondylitis, and the left shoulder treatments prescribed by Dr. Garst (including surgery), were reasonable, necessary and causally related to the work accident of February 4, 2013.

Accordingly, the arbitrator ordered the employer to pay for these treatments.

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

¶ 22 The employer then sought judicial review of the Commission's decision in the circuit court of Tazewell County. The employer conceded that the claimant had suffered a work-related injury to his left elbow. However, the employer disputed the Commission’s findings that the claimant’s left shoulder condition and his need for left shoulder surgery were work related and argued that it should not be required to authorize and pay for such surgery.

¶ 23 The circuit court confirmed the Commission's ruling. The circuit court acknowledged that, although Dr. Mitzelfelt related the claimant’s left shoulder pain to his work accident, he opined that the shoulder pain should “go away with therapy.” However, the circuit court noted that, at the time of his deposition, Dr. Mitzelfelt “did not have the benefit of the 2/3/2014 MRI and Dr. Garst’s subsequent opinion that a left shoulder arthroscopy was recommended.” The court stated that “Dr. Mitzelfelt’s opinion (prior to the 2/3/14 MRI) that therapy ‘should’ cause

the left shoulder pain to ‘go away’ does not limit [the claimant’s recovery] to the expense of therapy where his shoulder pain continued after January 10, 2014 and the MRI revealed a more serious condition,” prompting Dr. Garst’s subsequent recommendation of surgery.

¶ 24 This appeal followed.

¶ 25 ANALYSIS

¶ 26 The employer argues that the Commission's finding that the claimant's left shoulder condition and his need for left shoulder surgery is causally related to his employment is against the manifest weight of the evidence. To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). A work-related injury need not be the sole or principal causative factor, as long as it was a causative factor in the resulting condition of ill-being. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). Thus, even if the claimant had a preexisting degenerative condition which made him more vulnerable to injury, recovery for an accidental injury will not be denied as long as he can show that his employment was also a causative factor. *Sisbro*, 207 Ill. 2d at 205; *Swartz v. Illinois Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086 (2005). A claimant may establish a causal connection in such cases if he can show that a work-related injury played a role in aggravating or accelerating his preexisting condition. *Mason & Dixon Lines, Inc. v. Industrial Comm'n*, 99 Ill. 2d 174, 181 (1983); see also *Azzarelli Construction Co. v. Industrial Comm'n*, 84 Ill. 2d 262, 266 (1981); *Swartz*, 359 Ill. App. 3d at 108.

¶ 27 The issue of causation, including whether a work-related accident aggravated or accelerated a preexisting condition, is a factual question to be decided by the Commission. *Sisbro*, 207 Ill. 2d at 206. In resolving disputed issues of fact, including issues related to

causation, it is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 675 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041 (1999). A reviewing court may not substitute its judgment for that of the Commission on these issues merely because other inferences from the evidence may be drawn. *Berry v. Industrial Comm'n*, 99 Ill. 2d 401, 407 (1984). We will overturn the Commission's causation finding only when it is against the manifest weight of the evidence, *i.e.*, only when the opposite conclusion is “clearly apparent.” *Swartz*, 359 Ill. App. 3d at 1086. The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002). When the evidence is sufficient to support the Commission's causation finding, we will affirm. *Id.*

¶ 28 Applying these standards, we cannot say that the Commission's causation finding is against the manifest weight of the evidence. Proof of prior good health and change immediately following and continuing after an injury may establish that an impaired condition was due to the injury. *Land and Lakes Co.*, 359 Ill. App. 3d at 593; see also *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63–64 (1982); *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC, ¶ 39 (“A chain of events which demonstrates a previous condition of good health, an accident, and a subsequent injury resulting in disability may be sufficient circumstantial evidence to prove a causal nexus between the accident and the employee's injury.”). A “chain of events” analysis may be used to establish that a work-related injury aggravated a claimant's preexisting condition. *Price v. Industrial Comm'n*, 278 Ill. App. 3d 848, 854 (1996).

¶ 29 In this case, the claimant testified that he began experiencing severe pain in his left shoulder approximately three to four weeks after his left elbow surgery, when he stopped wearing an arm sling. He testified that he did not notice any left shoulder pain before then and that his left shoulder pain progressively worsened thereafter. The medical records corroborate the claimant's testimony. The first reference in the medical records to any left shoulder symptoms was on November 21, 2013 (approximately six weeks after the claimant's left elbow surgery), when the claimant told Dr. Mitzelfelt that he was experiencing left shoulder stiffness and medial elbow pain. When the claimant returned to Dr. Mitzelfelt on January 16, 2014, he reported that his left shoulder pain had "developed spontaneously *** several months ago." On January 16, 2014, Dr. Mitzelfelt concluded that the claimant's left shoulder pain was persistent and had progressed to the point that it was interfering with activities of daily living and recreational activities. When the claimant saw Dr. Garst the following month, he reported noticing problems with his left shoulder after his October 2013 left elbow surgery. He told Dr. Garst that the pain was interfering with his ability to perform overhead activities. Accordingly, there was ample evidence in the record suggesting that the claimant developed disabling left shoulder symptoms shortly after he underwent left elbow surgery to treat a work-related condition, that he had no disabling left shoulder symptoms before then, and that his disabling left shoulder symptoms persisted and worsened after they appeared. This "chain of events" evidence supports a reasonable inference that the work-related left elbow surgery caused or aggravated the claimant's left shoulder condition. See *Land and Lakes Co.*, 359 Ill. App. 3d at 593; *Price*, 278 Ill. App. 3d at 854.

¶ 30 The employer notes that the claimant told Dr. Garst in February 2014 that he was "not sure" if his shoulder pain predated his left elbow surgery. Based on this, the employer argues

that the claimant cannot establish causation under a “chain of events” theory because he cannot establish the first required element of such a theory, *i.e.*, a state of good health prior to a work-related accident. We disagree. A statement in a single medical record that the claimant was “not sure” precisely when his symptoms began does not outweigh the ample evidence suggesting that his left shoulder symptoms occurred for the first time after his elbow surgery (including the claimant’s sworn testimony and the medical records of Drs. Mitzelfelt and Garst). Moreover, even assuming *arguendo* that the claimant had experienced some left shoulder symptoms before his left elbow surgery, it is clear that his shoulder symptoms worsened substantially and became disabling after the surgery. The claimant told Dr. Garst that “after the elbow surgery *** he noticed a lot more left shoulder pain to the point where he is having trouble doing overhead activities.” Similarly, in January 2014, the claimant told Dr. Mitzelfelt that the pain in his shoulder “had been going on for a while but really intensified after coming out of the sling following surgery on his elbow.” Thus, at a minimum, the medical records support a reasonable inference that the claimant had a preexisting left shoulder condition that was aggravated by his work-related elbow surgery.

¶ 31 As the employer notes, the Commission mischaracterized one aspect of Dr. Mitzelfelt’s causation opinion. Specifically, the Commission stated that Dr. Mitzelfelt opined that the claimant’s left shoulder condition was caused by overuse of the shoulder following his elbow surgery. In fact, Dr. Mitzelfelt stated that he did *not* think that the claimant’s left shoulder condition was caused by overuse syndrome because the claimant could not use his left arm while it was immobilized in a sling following the left elbow surgery. However, the Commission’s error on this point does not change our analysis. A reviewing court can affirm the Commission’s decision if there is any legal basis in the record to support its decision, regardless of the

Commission's findings or reasoning. *General Motors Corp. v. Industrial Comm'n*, 179 Ill. App. 3d 683, 695 (1989). As shown above, the claimant's testimony and the medical records support a reasonable inference that the claimant's elbow surgery caused or aggravated his left shoulder condition. Thus, we may affirm the Commission's decision without relying on Dr. Mitzelfelt's opinion or the Commission's mischaracterization of that opinion.

¶ 32 The employer also argues that the Commission's decision should be reversed because the claimant failed to establish that his need for left shoulder surgery was the result of a work-related accident. Neither of the testifying medical experts opined that the left shoulder conditions revealed by the February 3, 2014, MRI were causally connected to the claimant's prior work injury or to his left shoulder surgery. Moreover, Dr. Mitzelfelt opined that the left shoulder symptoms the claimant was experiencing as of January 10, 2014, were the result of muscle spasms that should be resolved by physical therapy. Thus, the employer maintains, a "chain of events" analysis cannot establish that the claimant's need for left shoulder surgery is causally related to his employment.

¶ 33 We disagree. As noted above, the claimant's testimony and the medical records support a reasonable inference that the claimant's disabling left shoulder condition is causally related to his employment. After reviewing the results of the MRI scan of the claimant's left shoulder, both Dr. Garst and Dr. Mitzelfelt recommended surgery to treat the claimant's left shoulder condition. The fact that Dr. Mitzelfelt initially opined that the claimant's left shoulder condition could be treated successfully by physical therapy alone is of no consequence. Dr. Mitzelfelt offered that opinion on January 10, 2014, before an MRI was performed on the claimant's left shoulder. After reviewing the results of that MRI, and after learning that physical therapy had not alleviated the claimant's left shoulder symptoms, Dr. Mitzelfelt referred the claimant to Dr. Garst

“to discuss surgical options.”

¶ 34 In sum, the claimant had a disabling left shoulder condition which can reasonably be inferred to be causally connected to his employment. The chain of events sufficiently supports that causal inference, and no additional medical expert testimony is required. Surgery was prescribed to treat the claimant’s disabling left shoulder condition. Accordingly, the Commission’s finding that the claimant’s need for left shoulder surgery was causally related to his employment was not against the manifest weight of the evidence.

¶ 35 CONCLUSION

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

¶ 37 Affirmed; cause remanded.