NOTICE

Decision filed 11/21/11. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2011 Il App (1st) 103850WC-U

Workers' Compensation
Commission Division
Filed: November 21, 2011

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

No. 1-10-3850WC

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

MICHAEL PORVAZNIK,	) APPEAL FROM THE
	) CIRCUIT COURT OF
Appellant,	) COOK COUNTY
	)
v.	) No. 10 L 50635
	)
ILLINOIS WORKERS' COMPENSATION	)
COMMISSION, *et al*.,	)
(AVERY DENNISON,	) HONORABLE
	) ELMER J. TOLMAIRE, III,
Appellees).	) JUDGE PRESIDING.

JUSTICE HOFFMAN delivered the judgment of the court.
Presiding Justice McCullough and Justices Hudson, Holdridge and Stewart concurred in the judgment.

O R D E R

HELD: The Workers' Compensation Commission's findings regarding the claimant's claims are not against the manifest weight of the evidence.

¶ 1 The claimant, Michael Porvaznik, appeals from an order of the Circuit Court of Cook County confirming a decision of the Illinois Workers' Compensation Commission (Commission)

awarding him benefits under the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2002)) for injuries allegedly arising out of and in the course of his employment with Avery Dennison (Avery). On appeal, the claimant argues that we should reverse the circuit court's judgment because the Commission erred in finding that certain of his claimed symptoms were not causally related to his work, finding that certain of his medical expenses were not reasonable and necessary, terminating his temporary total disability (TTD) payments before he was able to return to work, and refusing to find him permanently and totally disabled. The claimant also asserts that we should reverse the circuit court's decision because important documents or testimony were not submitted into evidence or the record on appeal. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 2 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on June 18, 2009.

¶ 3 The claimant, who began working as a customer service representative for Avery in 1996, testified that, as of July 2002, his job duties consisted primarily of data entry and filing. The claimant said that, by July 2002, he felt "[t]ingling, burning, burning up the arms, headaches" and other pain primarily in his hands. He also said that he sometimes felt stiffness in his neck from reaching up for "heavy" (15- to 25-pound) binders he was "constantly" required to consult. The claimant said that he had experienced no neck problems prior to his employment with Avery.

¶ 4 On August 12, 2002, the claimant sought treatment for his hands with Dr. Eugene Lopez, who diagnosed him with carpal tunnel syndrome in both hands, referred him to physical therapy, and ordered him off of work for one month. On September 9, Dr. Lopez noted that therapy had improved the claimant's condition, and he allowed the claimant to return to work with a light-duty restriction. On September 23, however, Dr. Lopez recommended that the claimant undergo a carpal tunnel release surgery on his right hand and stop working in the meantime. That surgery was performed on October 4, and the claimant was again ordered off of work for a month. Treatment notes following the surgery indicated that the surgery had been successful.

¶ 5 On December 5, 2002, Dr. Lopez recommended that the claimant undergo a carpal tunnel release procedure on his left hand. The procedure was performed later that month, and the claimant was again taken off of work following the surgery.

¶ 6 Near the time of his treatment with Dr. Lopez, the claimant also sought care from Dr. Neil Elliot, a chiropractic physician. Dr. Elliot wrote in two August 2002 treatment notes, one February 2003 treatment note, and one March 2003 treatment note that the claimant was complaining of neck pain along with wrist and hand pain. The notes of his remaining chiropractic treatments, which occurred multiple times per week spanning from August 2002 through April 2003, did not mention any neck troubles and focused strongly on the claimant's hands, wrists, and forearms.

¶ 7 After the carpal tunnel release surgeries, the claimant continued to treat with Drs. Elliot and Lopez, and, on February 20, 2003, Dr. Lopez suggested that the claimant return to light-duty work on March 10. At that time, according to treatment notes, the claimant's hands were exhibiting marked improvement following his surgeries.

¶ 8 The claimant recalled that, when he returned to work in March 2003, Avery asked him to answer telephones, file, and also go into a plant to perform quality control, a task that involved lifting and pushing heavy objects. Contemporaneous treatment notes indicate that the claimant complained to Dr. Lopez that Avery was not honoring his work restrictions. The claimant said that the new work caused him hand, forearm, and neck pain.

¶ 9 The claimant was treated by Dr. Lopez on May 29, 2003, and Dr. Lopez continued the claimant's light-duty work restrictions. Dr. Lopez also concluded that the claimant had reached maximum medical improvement (MMI) in his right hand and would reach MMI in his left hand in one month. Dr. Lopez noted that he planned to return the claimant to work in one month. The next day, Avery terminated the claimant's employment. After a July 28, 2003, treatment visit, Dr. Lopez wrote that the claimant was at MMI and could return to work with permanent restrictions.

¶ 10 In September 2003, the claimant returned to Dr. Lopez complaining of discomfort, and Dr.

Lopez formed the impression that the claimant was suffering from dorsal tendinitis. Also in September 2003, the claimant was evaluated at Avery's request by Dr. Jay Pomerance, who noted that the claimant's neck range of motion was "unremarkable" and that "[n]o radicular signs or symptoms were present." Dr. Pomerance concluded that he could offer no diagnosis to explain the claimant's continuing complaints, which he noted continued despite an unusually long course of therapy and treatment following surgery. According to Dr. Pomerance, the claimant had reached MMI with respect to his hands. Dr. Pomerance later amended his report to indicate that video surveillance footage of the claimant supported his conclusion that the claimant could return to work.

¶ 11 The claimant continued to complain of pain in his hands in a December 2003 visit to Dr. Lopez. In a February 25, 2004, treatment note, Dr. Lopez stated, "[The claimant] now complains of neck pain shooting down to his hands. This has gotten much worse and he has now brought it to my attention." Dr. Lopez's prior treatment notes include no references to any neck problems, but, during his testimony, the claimant stated that he had earlier given Dr. Lopez chiropractic records of his neck problems. Dr. Lopez referred the claimant to Dr. Bruce Montella, a spine surgeon, and ordered an MRI of the claimant's cervical spine. The MRI, taken on March 9, 2003, indicated mild disc degeneration.

¶ 12 On March 30, 2004, Dr. Montella examined the claimant and recommended medication with continued physical therapy. However, according to an August 26, 2004, treatment note from Dr. Montella, the claimant continued to complain of neck and radiating arm pain. In October and November 2004, the claimant underwent epidural injections into his neck and cervical spine. The claimant testified that the third shot gave him temporary relief.

¶ 13 In a January 2005 treatment note, Dr. Montella wrote that the claimant's neck pain, radiculitis, and bilateral carpel tunnel syndrome were "severe and debilitating" and "likely permanent in nature." In February 2005, the claimant began to visit a Veterans' Administration hospital, largely for psychological treatment.

¶ 14 In March through May 2005, and again in July through August, the claimant underwent physical therapy for his neck and right arm. In an October 2005 treatment note, Dr. Montella wrote that the claimant's neck condition was unchanged and that the claimant was disabled. In April and May 2006, the claimant underwent another course of epidural injections in his cervical spine or neck area, and, again, he testified that the shots provided him only temporary relief. In the meantime, Dr. Montella maintained his opinion of the claimant's disability in treatment notes, culminating in a September 25, 2006, treatment note indicating that the claimant was permanently and totally disabled due to neck pain and radiating arm pain.

¶ 15 On May 30, 2006, the claimant complained to his doctors that he was suffering from headaches, which he believed were triggered by his using his hands. In July 2006, the claimant began treating with Dr. Robert Czarnecki, a chiropractic physician. In October 2006, the claimant reported a flare-up of his symptoms, which led Dr. Montella to prescribe narcotic pain medication.

¶ 16 In April and May 2007, the claimant underwent another course of physical therapy for his hands. In a June 2007 treatment note, Dr. Montella wrote that the claimant continued to have neck and radiating arm pain "consistent with work related cervical disc herniation and bilateral carpal tunnel syndrome." Dr. Montella continued this assessment in later treatment notes.

¶ 17 On November 12, 2007, the claimant underwent an MRI of his neck. The report of the MRI included the impressions that the claimant has "[s]traightening of the usual cervical curvature representing most likely post traumatic muscular spasm," and disc bulges at the C4-5 and C5-6 levels without spinal stenosis or significant neuroforaminal narrowing.

¶ 18 In November and December 2007, the claimant had a third course of three epidural injections to his neck.

¶ 19 The claimant testified that, by the spring of 2008, his symptoms persisted, and his headaches were becoming worse. In September and October 2008, the claimant pursued a fourth round of epidural injections, but he testified that the injections again provided no lasting relief.

From December 2008 to February 2009, the claimant participated in physical therapy for his hands. According to the claimant, while he was performing the physical therapy, he noticed that his headaches abated.

¶ 20 The claimant testified that, as of the time of the arbitration hearing, he was suffering from daily headaches; spasms in his neck, right shoulder, and back; burning pain in his arm, elbow, and hands triggered by gripping activities such as driving; and stabbing pain in his neck. He said that his neck pain had gotten worse since 2004. He also said that he exercised by walking his dog three times per day.

¶ 21 Avery presented testimony from a surveillance agency worker whose firm conducted surveillance of the claimant in September 2003, June 2004, and January 2005. In the surveillance footage, the claimant can be seen walking, walking his dog, getting into and out of automobiles, pushing a shopping cart, bending over to unload large items from a shopping cart, turning his head, completing household chores like bringing in the trash, shoveling snow, and riding a bicycle, all without any apparent difficulty.

¶ 22 In his deposition testimony, Dr. Lopez stated that it was his "strong" opinion that the claimant's carpal tunnel and neck problems were work-related. To relate the neck problems to the claimant's work, Dr. Lopez described a condition called "double crush phenomena" in which nerves become pinched in the wrist or neck. Dr. Lopez also opined that the surveillance footage depicted the claimant performing normal daily activities that did not affect him negatively. Although Dr. Lopez related the claimant's neck and hand conditions to the claimant's work, he could not describe the claimant's specific job functions.

¶ 23 In his deposition testimony, Dr. Montella, like Dr. Lopez, asserted that the activities depicted in the video surveillance of the claimant were "harmless and appropriate." He acknowledged that the claimant did not complain of neck pain until 2004, but he offered that the neck pain likely began in August 2002 but did not become more noticeable until it progressed while the hand pain ameliorated with treatment. Dr. Montella further opined that the claimant's

hand and neck problems were related to his employment, and he attributed some of the claimant's symptoms to the same double crush phenomenon Dr. Lopez had described. Dr. Montella believed that the cause of the claimant's pain–likely a nerve problem but not necessarily a nerve compression–went undetected in tests the claimant had undergone because those tests were not sufficiently sensitive. He based this opinion on observations that the claimant suffered no specific triggering event, that the claimant's repetitive work could cause his ailments, and that his problems were consistent and continuous. In Dr. Montella's opinion, the claimant had reached MMI in his hands and neck, but the "ongoing, severe and debilitating nature of" his symptoms kept him from pursuing employment.

¶ 24 Dr. Julie Wehner, who examined the claimant on Avery's behalf in July 2004, testified that the claimant's behavior during her examination was inconsistent, in that he moved without difficulty during parts of the examination but then reported extreme pain during other parts. In some parts, the claimatn was "shrieking" in a manner Dr. Wehner had never heard even from severely wounded patients. From this, Dr. Wehner concluded that the claimant was malingering in his pain reports. She further reported that MRI and EMG results revealed less severe problems than the claimant was describing and that surveillance footage showed the claimant moving his neck freely in a manner inconsistent with his complaints. In Dr. Wehner's opinion, by the time of her examination, the claimant should have been able to return to work and did not require further medical treatment. In fact, although she conceded that the claimant may have required a carpal tunnel release surgery on his right hand, Dr. Wehner opined that she saw no reason for his left carpal tunnel release procedure. On cross-examination, Dr. Wehner acknowledged that the claimant seemed to have noted neck problems during chiropractic treatment he received prior to the February 2004 visit at which Dr. Lopez first noted the claimant's neck complaints. She stated, however, that she attached little significance to the chiropractic records that included the complainant's neck complaints, because the chiropractic treatment did not appear to include any clinical examination. She further opined on cross-examination that neck pain could not be caused

by the repetitive reaching tasks the claimant described as his job duties.

¶ 25 On July 24, 2009, the arbitrator issued a decision awarding the claimant TTD benefits for the period from August 12, 2002, through July 28, 2003, the date he was released to return to work from his hand injuries. The arbitrator also awarded the claimant permanent partial disability payments for another 58 weeks thereafter for the 15% loss of use of each of his hands. The arbitrator denied the claimant's requests for medical expenses related to his neck treatment; he found that the medical care the claimant received for his hands "through July 28, 2003, was reasonable and necessary" but that the claimant's neck and chiropractic care, including chiropractic care for his hands, was not reasonable and necessary. In reaching his decision, the arbitrator concluded that the claimant had failed to prove that his "cervical condition, depression, anxiety and headaches are causally related to" his workplace injury. The arbitrator based this conclusion on the fact that Dr. Lopez's treatment records mentioned no neck problems until February 2004 (a date long after the claimant left Avery's employ), the fact that chiropractic records prior to that date only "sporadic[ally]" mentioned neck care and included no clinical examination or description, the notion that the claimant's job duties were not sufficiently traumatic to cause his claimed neck injury, the claimant's behavior on surveillance video, and the notion that Drs. Lopez and Montella offered causation opinions without "a sound or even reasonable basis." The arbitrator also rejected the claimant's request for permanent total disability benefits, because "[t]he surveillance video revealed that the [claimant] has endurance, stamina, and at least a medium physical capacity" and his assessment that the claimant "is not credible."

¶ 26 The claimant filed a petition for review of the arbitrator's decision, and the Commission affirmed and adopted the arbitrator's decision. The circuit court confirmed the Commission's decision on review, and the claimant filed this appeal.

¶ 27 The claimant's first argument on appeal is that the Commission erred in finding that his neck problems, along with his headaches and psychological problems, are not causally related to his workplace injury. A prerequisite to the right to recover benefits under the Act is some causal

relationship between the claimant's employment and the injury suffered. *Schwartz v. Industrial Comm'n*, 379 Ill. 139, 1445-45, 39 N.E.2d 980 (1942). Whether a causal relationship exists between a claimant's employment and his injury is a question of fact to be resolved by the Commission. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244, 461 N.E.2d 954 (1984). The Commission's determination on a question of fact will 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, 509 N.E.2d 1005 (1987). 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, 591 N.E.2d 894 (1992).

¶ 28 To press his causation argument, the claimant emphasizes that he mentioned his neck troubles to a physician other than Dr. Lopez prior to February 2004. He also emphasizes his treating physicians' opinions that he had workplace-related neck problems. The Commission nonetheless found that the claimant did not suffer a workplace-related neck injury, based on its determination that Drs. Lopez and Montella did not testify credibly and that any recorded neck complaints prior to February 2004 were unpersuasive and inconsistent with his behavior during video surveillance. It is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *O'Dette v. Industrial Comm'n*, 79 Ill. 2d 249, 253, 403 N.E.2d 221 (1980). The Commission resolved the conflicting evidence regarding the claimant's neck and other injuries, and its resolution finds evidentiary support in the record. The record includes Dr. Wehner's opinion that the claimant was malingering in his symptoms. Her opinions were supported by medical records indicating that the claimant did not mention any neck problems until after he had stopped working for Avery, medical records following the claimant's termination indicating that he had no neck problems, her interpretation of the claimant's MRI and EMG results as relatively unremarkable, and surveillance footage showing the claimant engaging in physical activities without apparent difficulty. Accordingly, we cannot say that the Commission's finding, that the claimant's alleged neck, head, and

psychological problems were not related to any workplace accident (and in fact did not arise until after the claimant's employment was terminated), is against the manifest weight of the evidence.

¶ 29 The claimant's second argument is that the Commission erred in denying him all the medical treatment benefits he sought. Under section 8(a) of the Act (820 ILCS 305/8(a) (West 2002)), a claimant is entitled to recover reasonable medical expenses, the incurrence of which are causally related to an accident arising out of an in the scope of his employment and which are necessary to diagnose, relieve, or cure the effects of the claimant's injury. *University of Illinois v. Industrial Comm'n*, 232 Ill. App. 3d 154, 164, 596 N.E.2d 823 (1992). Whether a medical expense is either reasonable or necessary is a question of fact to be resolved by the Commission, and its determination will not be overturned on review unless it is against the manifest weight of the evidence. *F&B Manufacturing Co. v. Industrial Comm'n*, 325 Ill. App. 3d 527, 534, 758 N.E.2d 18 (2001). Likewise, the question of whether medical treatment is causally related to a compensable injury is one of fact to be determined by the Commission, and its finding on the issue will not be reversed on review unless contrary to the manifest weight of the evidence. *Elmhurst Memorial Hospital v. Industrial Comm'n*, 323 Ill. App. 3d 758, 764-65, 753 N.E.2d 1132 (2001).

¶ 30 The claimant's entire argument on the issue of medical expenses consists of a tally of his expenses, his testimony that he received the treatment that had been billed, and a single conclusory statement that "[b]ased on a careful review of all the evidence, the Commission should have found" that his claimed medical expenses were reasonable and necessary. The Commission based its partial denial of medical expenses on its finding that the claimant's neck care was not related to a workplace injury, as well as its finding that the claimant's extended chiropractic care for his hands was not reasonable. We discussed above the basis for the Commission's finding that the claimant's neck complaints were not related to his work. As for the chiropractic care the claimant received for his hands, we observe that Dr. Pomerance, who examined the claimant in September 2003, could offer no medical explanation for the claimant's continued complaints of

hand pain and specifically noted the unusually long course of therapy the claimant had received on his hands. Against the weight of this evidence, the claimant's argument is insufficient to persuade us that the Commission's findings on the reasonableness and necessity of the claimant's medical expenses are against the manifest weight of the evidence.

¶ 31 The claimant's third argument on appeal is that the Commission erred in terminating his TTD benefits on July 28, 2003, because, according to the claimant, he remained temporarily totally disabled through the date of the arbitration hearing and thus was entitled to TTD benefits through that date. Whether a claimant is temporarily totally disabled is a question of fact (*Sorenson v. Industrial Comm'n*, 281 Ill. App. 3d 373, 385, 666 N.E.2d 713 (1996)), as is the determination of the time during which a claimant is temporarily totally disabled (*Archer Daniels Midland Co. v. Industrial Comm'n*, 138 Ill. 2d 107, 118-19, 561 N.E.2d 623 (1990)). We will not overturn the Commission's factual findings unless they are against the manifest weight of the evidence. *Orsini*, 117 Ill. 2d at 44.

¶ 32 As with his other arguments, the claimant bases his TTD argument on his interpretation of the evidence presented to the Commission, and he lends the most credence to the opinions of the treating physicians who testified on his behalf. However, the Commission's selection of July 28, 2003, as the date the claimant's TTD ended has support in other parts of the record. Although Dr. Lopez later opined that the claimant was totally disabled, Dr. Lopez wrote in a July 28, 2003, treatment note that the claimant had reached MMI with respect to his hands. After a September 2003 examination of the claimant, Dr. Pomerance shared the opinion that the claimant had reached MMI with relation to his hand problems. Video surveillance of the claimant in 2003 and 2004 demonstrated that he was able to perform moderately physical tasks without apparent trouble. Dr. Wehner opined that the claimant was exaggerating or falsifying his pain complaints , and she noted that MRI and EMG tests revealed no medical justification for the claimant's complaints. Further, to the extent the claimant suffered neck or related pain, there was strong evidence that the neck pain, which the claimant did not mention to physicians until after his

employment with Avery was terminated, was not related to his work. Based on all this evidence supporting the Commission's decision that the claimant's total disability did not extend past July 28, 2003, we reject the claimant's argument that the Commission's finding was against the manifest weight of the evidence.

¶ 33 The claimant next argues that the Commission erred in finding that he was not permanently totally disabled. The extent of disability is a question of fact to be determined by the Commission. *Oscar Mayer & Co. v. Industrial Comm'n*, 79 Ill. 2d 254, 256, 402 N.E.2d 607 (1980). Here, the Commission determined that the claimant's permanent disability amounted to the 15% loss of use in each of his hands. The Commission had ample evidence on which to base a finding that the claimant did not suffer a more severe permanent disability. That evidence included, among other things, the opinion of Dr. Wehner that the claimant was overstating his problems, as well as surveillance footage showing the claimant shoveling snow and performing other tasks. For that reason, we disagree with the claimant that the Commission's finding regarding his claim of permanent disability was against the manifest weight of the evidence.

¶ 34 Aside from his challenges to the Commission's findings, the claimant also asks that we reverse the Commission's decision because his attorney did not present certain evidence to the arbitrator, the arbitration transcript is incomplete, his condition worsened after the hearing, his attorney should have filed an amendment application for adjustment of claim, and the record omits part of his medical records. To the claimant's assertions that the record on appeal is incomplete, we respond that any doubts arising from the insufficiency of the record must be resolved against him as the appellant. *Padgett v. Industrial Comm'n*, 327 Ill. App. 3d 655, 661, 764 N.E.2d 125 (2002) (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392, 459 N.E.2d 958 (1984)). To the extent the claimant argues that his attorney's negligence prejudiced his claim, his remedy lies elsewhere; this action is limited to review of the Commission's decision and does not extend to any disputes between the claimant and his counsel. Finally, to the extent the claimant relies on his account of worsening symptoms after the arbitration hearing, we respond that the Comission

was limited to the evidence adduced at the arbitration hearing and it could not consider new evidence. See 820 ILCS 305/19(e) (West 2002) ("no additional evidence shall be introduced by the parties before the Commission on review of the decision of the Arbitrator.")

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