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2014 IL App (1st) 130761WC-U

FILED: July 14, 2014

NO. 1-13-0761WC

IN THE APPELLATE COURT

OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

ROSENDO VILLASENOR,)	Appeal from
)	Circuit Court of
Appellee,)	Cook County
)	No. 12L50452
v.)	
THE ILLINOIS WORKERS' COMPENSATION)	
COMMISSION <i>et al.</i> (UESCO Industries, Inc.,)	Honorable
Appellant).)	Margaret Brennan,
)	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 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 and reinstating the arbitrator's award.

¶ 2 On May 4, 2009, claimant, Rosendo Villasenor, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2008)), seeking benefits from the employer, UESCO Industries, Inc. Following a hearing, the arbitrator determined claimant sustained work-related injuries to his left arm and hand that

arose out of and in the course of his employment on October 18, 2007. The arbitrator awarded claimant (1) medical expenses, pursuant to the medical fee schedule, totaling \$27,182.67; (2) 82-2/7 weeks' temporary total disability (TTD) benefits; and (3) 14-5/7 weeks' maintenance benefits. He also ordered the employer to pay penalties and attorney fees of \$33,445.04, pursuant to section 19(k) of the Act; \$14,670, pursuant to section 19(l) of the Act; and \$6,689.01 pursuant to section 16 of the Act (820 ILCS 305/16, 19(k), 19(l) (West 2008)).

¶ 3 On review, the Workers' Compensation Commission (Commission) reversed the arbitrator's decision, finding claimant failed to prove accident, causal connection, or notice with respect to any left upper extremity injury and was not entitled to benefits under the Act. On judicial review, the circuit court of Cook County reversed the Commission and reinstated the arbitrator's decision. The employer appeals, arguing the Commission's denial of benefits under the Act was not against the manifest weight of the evidence. We reverse the circuit court's judgment and reinstate the Commission's decision.

¶ 4 I. BACKGROUND

¶ 5 At arbitration, claimant testified with the aid of an interpreter. He stated he worked for the employer for more than five years and his job duties required him to paint cranes that were used to lift freight. On October 18, 2007, claimant was standing on a ladder at work and painting when he lost his balance and fell from a height of approximately four feet. He testified he was able to catch himself by using the little, middle, and ring fingers of his left hand to grab onto a piece of equipment he referred to as a "horse." Because claimant was able to "hold the fall with [his] three fingers," he did not fall all the way to the floor. After the incident, his left shoulder and hand "hurt a lot" and claimant noticed swelling and a burning sensation in his left upper extremity. Claimant denied sustaining injury to any part of his body other than his

left arm.

¶ 6 The same date as his accident, claimant's supervisor sent him to Metro Primary Care Associates (Metro) for medical treatment. Claimant testified his left arm, hand, and elbow were examined. Although x-rays were also taken, he stated he did not know what part of his body was x-rayed because he was placed with his back against a wall.

¶ 7 Records from Metro show, on October 18, 2007, claimant saw Dr. Daniel Desimone. They state as follows:

"Patient's words: pt was painting around 12:30-1:00. pt fell and put all weight on rt arm. Painful in shoulder when pt moves. pt states no allergies to meds[.]

The patient is a 43 year old male who presents with a complaint of arm pain. pt fell & injured R arm (elbow & shoulder)—fell about 2-3 feet & landed on an outstretched R hand—pt w/ pain upon reaching up—pt had surg on R forearm 5 yrs ago—no parasthesias [*sic*] in R hand."

Upon physical examination, Dr. Desimone noted "pain over R ac joint & GH joint" and "also pain" over claimant's left elbow. He stated claimant had full range of motion in his elbow but very limited range of motion in his left shoulder. Dr. Desimone assessed claimant as having a right elbow contusion and a right shoulder strain with possible first degree AC separation. Various records from Metro, dated October 18, 2007, consistently identify claimant's right upper extremity as the one for which he sought treatment, including radiology reports that showed x-rays were taken of claimant's bilateral acromioclavicular joints, right shoulder, and right elbow.

¶ 8 On October 23, 2007, claimant followed up with Dr. Desimone. Records state he

reported continued shoulder pain but that he could "do his job w/out a problem." Upon examination, Dr. Desimone noted as follows: "still some pain w/ int/ext rotation but rom full—cms in distal arm is intact." The records do not specify which upper extremity was the subject of claimant's complaints or Dr. Desimone's examination; however, they, again, show claimant was assessed as having a right elbow contusion and a right shoulder strain with possible first degree AC separation. Dr. Desimone returned claimant to full-duty work, noting his final x-ray reports were negative, and recommended he follow up as needed.

¶ 9 Claimant denied that he received treatment for his right arm after his October 2007 accident. More specifically, he denied that his right arm was examined at Metro on October 18, 2007. He explained that references to his right arm in his initial records from Metro were a mistake. Claimant asserted he reported the mistake to Dr. Desimone once he knew about it. He did not recall the exact date that he learned of the mistake but testified "it was two weeks after." On cross-examination, claimant testified he reported the mistake to Dr. Desimone during his second visit on October 23, 2007. Further, he also denied that, during his October 23 visit, he requested that he be returned to full-duty work and testified, at that time, his left arm was hurting.

¶ 10 On February 4, 2008, claimant returned to Dr. Desimone. Records state as follows:

"Pt has been working normally since release to reg duty—today pt states he was reaching for an object in an awkward posn & injured shoulder—he also has devl'ed some parasthesias [*sic*] in his L hand as well—NO FRANK TRAUMA."

Dr. Desimone found claimant had decreased range of motion in his left shoulder and diagnosed him with a left shoulder strain. Claimant testified, during the intervening time period between his October 23, 2007, visit and his February 4, 2008, return to Dr. Desimone, he performed full-duty work for the employer.

¶ 11 Thereafter, claimant continued to seek medical care with respect to only his left upper extremity. On February 11, 2008, he returned to Metro and reported shoulder pain. Dr. Desimone noted decreased range of motion in the left shoulder with pain and assessed claimant as having a left shoulder sprain. On February 25, 2008, Dr. Desimone noted claimant reported improvement with his left shoulder, stated he could perform his regular job duties, and requested a release for regular-duty work. Dr. Desimone released claimant to full-duty work and stated he could follow up as needed.

¶ 12 On June 30, 2008, claimant returned to Metro and saw Dr. Mohammed Asgar with complaints of pain in his left shoulder, left wrist, and neck. Dr. Asgar assessed him as having rotator cuff syndrome and recommended a magnetic resonance imaging (MRI) of the "left upper joint." On July 15, 2008, Dr. Desimone noted claimant returned for follow up and had been in physical therapy since his last visit. He also noted claimant was seen by an orthopedic doctor and given shots in his shoulder and left hand. Claimant reported experiencing no relief from any of his treatments. Dr. Desimone assessed claimant as having rotator cuff syndrome and noted, although there was no frank tear, claimant's MRI showed evidence of extensive tendinopathy. He recommended claimant return to light-duty work with limited use of his left shoulder until he could be cleared for surgery.

¶ 13 Claimant testified he was referred to Parkview Orthopedics. On July 16, 2008, he began seeing Dr. Steven Wardell with complaints of an injury to his left shoulder. Claimant

reported, on October 18, 2007, he "was spray painting using two stepladders when the ladder broke and [he] fell directly on his left arm" and "fell into a portable wooden horse that was holding up the ladder." Dr. Wardell diagnosed claimant with left shoulder rotator cuff tendonitis with subacromial bursitis. He recommended a steroid injection and outpatient physical therapy. Ultimately, on September 22, 2008, Dr. Wardell performed surgery on claimant's left shoulder. After his surgery, claimant was off work.

¶ 14 Also following surgery, Dr. Wardell noted claimant had left middle trigger finger and left wrist pain, which claimant reported dated "back to his injury." On December 17, 2008, Dr. Wardell directed claimant to follow up with Dr. William Baylis concerning his left trigger finger. On December 26, 2008, claimant saw Dr. Baylis who noted claimant had a work-related injury on October 18, 2007, and "[s]ince then *** had a trigger finger and pain over his 6th dorsal compartment." On January 16, 2009, Dr. Baylis performed a left middle finger trigger release on claimant. Claimant testified he was also off work following that surgery.

¶ 15 In April 2009, claimant began seeing Dr. Michael Bednar, a hand specialist. He complained of pain on the top of his left hand and reported injuries to his left shoulder, wrist, and hand after "he fell off a ladder while spray painting on October 18, 2007." Claimant testified he also received treatment for his left hand from Dr. Scott Rubinstein, an orthopedic surgeon. On May 18, 2009, he saw Dr. Rubinstein and reported being injured in October 2007, "when he fell from a ladder[,] landing on his left arm." Ultimately, Dr. Rubinstein diagnosed claimant with left wrist tenosynovitis. On September 15, 2009, he performed surgery on claimant in the form of a left fifth extensor capri ulnaris tenosynovectomy.

¶ 16 After surgery, claimant underwent physical therapy and continued to follow up with Dr. Rubinstein. On April 21, 2010, Dr. Rubinstein released claimant to return to full-duty

work. Claimant testified he tried to return to work for the employer but his job was not given back to him. On August 2, 2010, claimant began working for a different employer.

¶ 17 At arbitration, claimant submitted Dr. Rubinstein's deposition. Dr. Rubinstein opined claimant's left wrist condition was causally connected to his October 2007 work accident. He testified he based his opinion on the history claimant provided, his review of claimant's records, and his findings upon examination of claimant.

¶ 18 Employer submitted the deposition of Dr. Thomas Wiedrich, who examined claimant on October 14, 2009, at the request of the employer's insurance company. Dr. Wiedrich testified he was a hand surgeon and examined only claimant's hand and wrist. He opined the condition of ill-being in claimant's left hand and wrist was not causally connected to his October 2007 accident. Dr. Wiedrich found claimant's first complaints of wrist pain did not occur until June 2008, approximately eight months after his accident. He noted claimant's initial medical records following the accident identified claimant's right arm as the one injured.

¶ 19 On November 9, 2010, the arbitrator issued his decision in the matter, finding claimant sustained injuries that arose out of and in the course of his employment on October 18, 2007, and awarding benefits as stated. In reaching his decision, the arbitrator determined claimant treated only for his left arm and hand after his October 2007 accident and Metro "made an error in listing the right arm as the injured arm."

¶ 20 On March 9, 2012, the Commission reversed the arbitrator's decision, finding claimant failed to prove accident, causal connection, and notice with respect to any left upper extremity injury. It determined claimant suffered "some apparent minor right arm strain injury" as a result of his October 2007 accident but failed to prove injury to his left arm as a result of that accident. To support its decision, the Commission noted claimant's medical records from

October 2007, referred to the right arm as the one injured. It found that, although claimant's initial treatment record also noted a complaint of pain in the left arm, there was "no indication the left arm was injured" and "nothing else was done regarding the left arm until *** February 2008" when claimant reported he developed left shoulder pain after reaching awkwardly. The Commission further pointed out that the medical records did not support claimant's testimony that the right arm was mentioned in error or that he brought any error to Dr. Desimone's attention. It stated the records for claimant's two visits to Metro in October 2007 contained doctor's notes, nurse's notes, and radiology reports which all clearly indicated claimant was being seen with respect to complaints for his right upper extremity. The Commission stated "[c]learly the contemporaneous records do not all contain typographical errors with all those records including the radiology reports even noting [claimant's] prior right forearm surgery and even identifying the hardware on the x-ray of the right arm."

¶ 21 On February 6, 2013, the circuit court of Cook County reversed the Commission's decision, finding it was against the manifest weight of the evidence. The court reinstated the arbitrator's decision.

¶ 22 The employer appeals.

¶ 23 II. ANALYSIS

¶ 24 On appeal, the employer argues 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. It contends it was within the province of the Commission to weigh the evidence and draw reasonable inferences from that evidence, and there was sufficient evidence in the record to support the Commission's determination that claimant failed to prove he injured his left arm at work on October 18, 2007.

¶ 25 "To obtain compensation under the Act, a claimant bears the burden of showing, by a preponderance of the evidence, that he has suffered a disabling injury which arose out of and in the course of his employment." *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 203, 797 N.E.2d 665, 671 (2003). " 'In the course of employment' refers to the time, place and circumstances surrounding the injury" while "[t]he 'arising out of' component is primarily concerned with causal connection." *Sisbro*, 207 Ill. 2d at 203, 797 N.E.2d at 671-72.

¶ 26 "Before a reviewing court may overturn a decision of the Commission, the court must find that the award was contrary to law or that the Commission's factual determinations were against the manifest weight of the evidence." *Beelman Trucking v. Illinois Workers' Compensation Comm'n*, 233 Ill. 2d 364, 370, 909 N.E.2d 818, 822 (2009). "Fact determinations are against the manifest weight of the evidence only when an opposite conclusion is clearly apparent—that is, when no rational trier of fact could have agreed with the agency." *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64, 862 N.E.2d 918, 924 (2006). "[W]hether an injury arose out of and in the course of a claimant's employment is a question of fact for the Commission to resolve." *Springfield Urban League v. Illinois Workers' Compensation Comm'n*, 2013 IL App (4th) 120219WC, ¶ 24, 990 N.E.2d 284.

¶ 27 "It is the function of the Commission to determine the facts, judge the credibility of the witnesses, and draw reasonable inferences from competent evidence." *City of Springfield, Illinois Police Department v. Industrial Comm'n*, 328 Ill. App. 3d 448, 452, 766 N.E.2d 261, 264 (2002). On review, a court should "not reweigh the evidence, or reject reasonable inferences drawn from it by the Commission, simply because other reasonable inferences could have been drawn." *Durand*, 224 Ill. 2d at 64, 862 N.E.2d at 924. "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.

¶ 28 Here, the record contained sufficient evidence to support the Commission's decision that claimant failed to prove his left upper extremity conditions of ill-being arose out of and in the course of his employment. Claimant's medical records from October 2007 identify his right arm as the one injured as a result of his October 18, 2007, work accident. Although Dr. Desimone's October 18 record also noted left arm complaints, various documents in claimant's Metro records clearly identify claimant's right upper extremity as the focus of his complaints and medical evaluation. Those same records fail to reflect claimant attributed any condition in his left arm to his work accident. The same day as his accident, Dr. Desimone diagnosed claimant with a right elbow contusion and right shoulder strain with possible first degree AC separation. He recommended x-rays, which radiology reports show were performed on claimant's bilateral acromioclavicular joints, right shoulder, and right elbow. On October 23, 2007, records show claimant reported continued shoulder pain but that he could "do his job" with no problem. Dr. Desimone released claimant to full-duty work and recommended he follow up on an as-needed basis.

¶ 29 Following his October 23, 2007, visit, claimant continued to perform full-duty work for the employer without further medical treatment. On February 4, 2008, he returned to Dr. Desimone and reported "he was reaching for an object in an awkward [position and] injured his shoulder." Claimant also reported paresthesias in his left hand. Dr. Desimone diagnosed him with a left shoulder strain. After February 4, 2008, claimant only sought treatment with respect to his left upper extremity. Given this evidence, the Commission could reasonably infer (1) claimant injured only his right upper extremity as a result of his October 18, 2007, work

accident; (2) the condition of ill-being in his right upper extremity quickly resolved, allowing claimant to return to full-duty work; and (3) claimant's left upper extremity conditions of ill-being, which he began consistently complaining of in February 2008, did not arise out of or in the course of his employment on October 18, 2007.

¶ 30 At arbitration, claimant testified he injured his left arm on October 18, 2007, and not his right arm. He expressly denied receiving medical care for his right arm after October 2007 or that his right arm was even examined at Metro on October 18, 2007. Claimant asserts medical records mistakenly documented his right arm as the one he injured on October 18, and when he became aware of that mistake, he reported it to Dr. Desimone.

¶ 31 Here, the medical records contradict claimant's testimony that he received no medical care with respect to his right arm on October 18, 2007, and, instead, show Dr. Desimone examined both of claimant's upper extremities and ordered x-rays of claimant's right elbow, right shoulder, and bilateral acromioclavicular joints, all of which were performed on claimant as documented by radiology reports. Further, nothing in claimant's medical records support his assertion that he corrected a mistake as to the arm injured by reporting the mistake to Dr. Desimone. Additionally, Dr. Desimone's February 4, 2008, record refers to an origin for claimant's left arm complaints other than his October 2007 accident.

¶ 32 As stated, it was within the province of the Commission to determine facts and draw appropriate inferences from the evidence presented. Whether claimant's initial medical records mistakenly referred to claimant's right, rather than left, upper extremity was a question of fact for the Commission. The Commission weighed the evidence presented and determined no mistake occurred. It is not the function of this court or any other to reweigh the evidence. We cannot say that an opposite conclusion from that of the Commission is clearly apparent, *i.e.*, that

no rational trier of fact could have agreed with the Commission. Under the circumstances presented, the Commission's decision is not against the manifest weight of the evidence.

¶ 33

III. CONCLUSION

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

¶ 35 Judgment reversed and Commission decision reinstated.