

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).

2014 IL App (3d) 130604WC-U

Order filed September 22, 2014

NO. 3-13-0604WC

IN THE APPELLATE COURT

OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MORTON AUTO AUCTION,)	Appeal from
)	Circuit Court of
Appellee,)	Tazewell County
)	No. 12MR81
v.)	
)	
THE ILLINOIS WORKERS' COMPENSATION)	Honorable
COMMISSION <i>et al.</i> (Joshua Alford, Appellant).)	Paul Gilfillan,
)	Judge Presiding.

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

ORDER

- ¶ 1 *Held:* The Commission's determination that claimant sustained a back injury that arose out of and in the course of his work for the employer was not against the manifest weight of the evidence and the circuit court erred in reversing the Commission's decision.
- ¶ 2 On March 22, 2011, claimant, Joshua Alford, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2010)), seeking benefits from the employer, Morton Auto Auction, for a back injury he alleged he sustained after slipping on a wet surface. Following a hearing, the arbitrator determined claimant failed to establish an accidental injury that arose out of and in the course of his employment and

denied benefits. On review, the Illinois Workers' Compensation Commission (Commission), with one commissioner dissenting, reversed the arbitrator and awarded claimant (1) reasonable and necessary medical expenses totaling \$6,592.59; (2) prospective medical care in the form of the magnetic resonance imaging (MRI) recommended by one of claimant's doctors; and (3) 23-2/7 weeks of temporary total disability (TTD) benefits. The Commission also remanded the matter to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980). On judicial review, the circuit court of Tazewell County reversed the Commission and reinstated the arbitrator's denial of benefits. Claimant appeals, arguing the Commission's determination that he sustained a compensable back injury that arose out of and in the course of his employment was not against the manifest weight of the evidence. We agree and reverse the circuit court's judgment, reinstate the Commission's decision, and remand the matter for further proceedings.

¶ 3

I. BACKGROUND

¶ 4

At arbitration, claimant, then age 25, testified he worked for the employer for approximately four years. He detailed cars at the employer's "finishing station" and his job duties included cleaning windows, buffing, dressing tires, and parking cars.

¶ 5

Claimant alleged he sustained work-related injuries on January 17, 2011. On that date, he took another employee's place and performed interior work in addition to his regular job duties. When performing the interior work, claimant stated he was "hunched over" or crouched down and scrubbing seats, vacuuming, and wiping down doors. Claimant testified that, while working, he "slipped several times on the floor." He stated the floor was wet with water and "tire dressing," which made it "extra slick." Claimant noted the water and "tire dressing" mixture was not typically on the floor because tires were usually "dressed in a different spot." However, on

January 17, 2011, he had to do everything in one location because there were not enough people working.

¶ 6 Claimant testified that each time he slipped, he would find something to grab on to so that he could prevent himself from falling. He stated he "was hunched over and basically [would] just twist." Claimant testified the slipping "would tweak [his] back" and he experienced pain. He stated he felt a "pop" in his back and pain in both his mid and lower back. Claimant denied that there was any one particular instance when the pain was more severe and asserted it just occurred over the course of the day and worsened the longer he was at work.

¶ 7 Claimant testified he did not immediately report his accident to the employer because he "was hoping the chiropractor would work," he "didn't think it was as bad as it was," and he did not want to deal with workers' compensation. He also continued to work. However, claimant stated there were days he would not go in to work because he "hurt too bad." He testified he only worked two full days following his accident and left after lunch every other day. Ultimately, claimant sent a letter to the employer, notifying it of his injury. The employer received notice on March 3, 2011.

¶ 8 On January 24, 2011, claimant sought chiropractic treatment from Dr. Robert Richardson. Records show he made chief complaints of pain in his thoracic and lumbar spine, which began approximately two weeks earlier. Dr. Richardson's records also state as follows:

"Past, Family, and Social History

- *Illnesses.* Flu 2 weeks ago – initiated back pain
- *Injuries.* Car accident 1997
- Strained mid back from car detailing job on wet floors early part of January 2011."

Dr. Richardson diagnosed claimant with spinal stenosis of the lumbar region, joint stiffness, muscle spasms, and lumbago.

¶ 9 On cross-examination, the employer's counsel showed claimant a copy of a questionnaire that claimant agreed he filled out along with help from his father during his initial chiropractic visit. Although that particular form does not appear in the appellate record, claimant agreed that it identified his injury as work-related; indicated his back pain began after he had the flu; and identified January 11, 2011, as the date his back pain began. Claimant acknowledged having the flu in January 2011, but denied that his back pain started after his bout with the flu. He asserted the questionnaire was filled out by his father and he did not know why it stated his back pain started after the flu. With respect to information on the questionnaire indicating his back pain began January 11, 2011, claimant testified as follows: "I know it happened on the day at work. I don't know the exact day. My dad figured January 17th by when he wrote the check for the chiropractor." Claimant reiterated that he was at work when he first started feeling back pain.

¶ 10 Claimant testified he saw his chiropractor three times a week for approximately one month but the treatments he received did not help his symptoms. Instead, his pain slowly increased. Records show claimant received chiropractic treatments through March 14, 2011. He consistently complained of pain in the lumbar and thoracic areas of his spine. On February 14, 2011, records show Dr. Richardson gave claimant work restrictions. He also noted "therapies increased [claimant's] pain in the lumbar areas." On February 17, 2011, Dr. Richardson noted claimant "[s]topped the physical therapies due to exacerbation [*sic*] of lower back pain" and "[e]ven with lighter therapies, [claimant] stated that pain [was] worse and the numbness in [his] feet [was] worse." He concluded claimant was "not responding to care as anticipated" and fur-

ther diagnostic treatments to rule out a possible tear in the oblique muscles or disc herniations were necessary.

¶ 11 On February 23, 2011, claimant returned to Dr. Richardson and, in addition to thoracic and lumbar pain, he began reporting tingling and pain that radiated into his lower extremities. On February 25, March 3, March 7, and March 10, 2011, Dr. Richardson recorded similar complaints of radiating pain.

¶ 12 Claimant testified he also sought medical treatment from Dr. Matthew Stetter at Proctor First Care (Proctor). On March 1, 2011, claimant was first seen at Proctor and reported being injured at work on January 17, 2011, when he "slipped 200 times" and "slipped while walking hunched over 200 [plus] times." He reported experiencing pain in his mid back that radiated down both legs and that he had been seeing a chiropractor, which had not been of much help. Claimant was prescribed medication and given work restrictions.

¶ 13 On March 9, 2011, he returned to Dr. Stetter and complained of mid back pain that "shoots down bilaterally" and was more often on his left side. Dr. Stetter diagnosed him with lumbar radiculopathy and recommended physical therapy. Additionally, x-rays were taken of claimant's lumbar spine and showed mild degenerative changes. On March 24, 2011, Dr. Stetter noted claimant reported his condition was getting worse and he had not started physical therapy because he was "not getting approved."

¶ 14 Claimant testified he ultimately underwent physical therapy for three weeks. On March 30, 2011, claimant had an initial physical therapy evaluation. His presenting diagnosis was lumbar radiculopathy. Claimant provided the following accident history:

"[Claimant] reports that he was working detailing cars for [the employer] and *** he was slipping numerous times onto either slip-

pery or wet floors, cleaning out the inside of vehicles. He reports that prior to the 17th, he was ill and that was his first day back to work. He also states that evidently this detailing of the inside was not his regular job. He reports that at the end of that day he had mid and lower back pain and pain in both legs, left more than right."

Claimant underwent physical therapy approximately twice a week through April 26, 2011. He testified physical therapy did not help his condition and only made it worse.

¶ 15 On April 14, 2011, claimant returned to Dr. Stetter, who noted claimant was undergoing physical therapy but it was not helping. Claimant reported "pain down into his thighs for several h[ou]rs at a time." Dr. Stetter recommended claimant continue physical therapy and undergo an MRI. On April 26, 2011, claimant attended his final physical therapy appointment and records state he was not making any progress in therapy. On April 28, 2011, Dr. Stetter noted claimant was not doing well in physical therapy and was "now using [a] walker." Further, he noted claimant was still waiting on approval for an MRI. Dr. Stetter recommended claimant stop physical therapy, prescribed medication, and excused claimant from work. Claimant testified he continued to see Dr. Stetter who prescribed him increasingly stronger pain medication.

¶ 16 Claimant testified his pain continued to worsen over the course of his treatment with Dr. Stetter. He stated he had limited range of motion, could barely walk with a walker, and could not put pressure on his left leg. Claimant described a normal day for him as "sitting" and stated he was unable to take care of himself. He asserted his pain level was an eight but believed pain killers prescribed by Dr. Stetter did help. Claimant noted a prior history of back treatment following a car accident when he was 12 or 13 years old. He denied any other back-related

treatment since that time. Claimant also denied experiencing symptoms of pain in his mid and lower back that radiated to his legs prior to January 17, 2011.

¶ 17 On July 12, 2011, claimant saw Dr. Dru Hauter at the employer's request. The employer submitted Dr. Hauter's medical evaluation report into evidence. That report shows Dr. Hauter recorded the following accident history:

"[Claimant] states that he usually details the outside of the cars, but he states he was detailing the inside of the cars on January 17, 2011. He states that he had to assume crouched and bent over positions while working inside the cars. He states that he works in a very tight space and that while maneuvering around cars he slipped on tire dressing that was sprayed onto tires and landed on the floor. He states that he had several slips during the day of work. He states that he never fell to the floor because the space was tight and he could catch himself on the wall or nearby objects. He states that he did not lift heavy objects. He states that he cannot identify one of the slips that started a pain in the middle back. He states that he feels it was the combination of slips that led to the pain. He states that in the evening after work and the next working day he felt stiff and sore."

¶ 18 Following an examination, Dr. Hauter's first impression was that claimant had a lumbar muscle sprain. However, he could not relate that problem to claimant's work for the employer or the multiple slips claimant described. Dr. Hauter reasoned claimant asserted he did not have one event that started the problem, he had mini slips that occurred up to 200 times, the on-

set of his pain was at home, and his initial chiropractic treatment records did not mention a trauma. His second impression was that claimant had a central nervous system disorder like multiple sclerosis or amyotrophic lateral sclerosis. He based that impression upon findings that claimant had nystagmus in his right eye, upper extremity tremulousness, profound weakness in his legs, and weak vocal quality. Dr. Hauter opined those symptoms could not be explained by a lumbar spinal disorder. Further, he asserted none of those problems would be caused or aggravated by the mini slips claimant described. Dr. Hauter recommended an MRI but stated the need for an MRI was not related to claimant's work.

¶ 19 Dr. Hauter's third impression was symptom magnification. He recommended claimant undergo a work-up by his primary care provider to screen for the most common causes of non-mechanical back pain. Finally, Dr. Hauter summarized his conclusions as follows:

"[Claimant] claims that he had an injury to his lower back not from an injury but because of the repeated mini slips on a wet floor. His current complaints are not consistent with the claim. His current complains [*sic*] could not be explained by these mini slips that he states did not ever result in a fall to the ground or a strike to the body. The claimant has objective evidence of a neurologic problem that cannot be explained by solely a lumbar spinal problem. Work[-]up should be undertaken into the cause of this problem. The causes would not be caused or aggravated by the work at [the employer] or the injury as described on January 17, 2011. [Claimant] should have a full neurologic work[-]up to iden-

tify the neurologic disorder. He is unable to work due to this neurologic problem that is not caused or aggravated by work."

¶ 20 On cross-examination, claimant denied telling Dr. Hauter that the onset of his pain was at home. Further, he acknowledged providing a history of his injury that included experiencing "mini slips" at work up to 200 times. Claimant specified that number "was [his] best guess because [he] couldn't keep [his] footing at all at work."

¶ 21 On November 29, 2011, the arbitrator issued his decision in the matter, denying claimant benefits under the Act. (We note the arbitration hearing was heard, and the arbitration decision entered, by different arbitrators.) He found claimant "failed to prove a compensable event and *** failed to prove that his current condition of ill[-]being [arose] out of his employment with [the employer]." The arbitrator expressly noted (1) claimant's delay in reporting his alleged injury to the employer; (2) initial chiropractic records, which reflected an onset of symptoms that occurred after claimant had the flu and on January 11, 2011; (3) that Dr. Hauter provided the only medical opinion in the case and found claimant's condition unrelated to his employment; and (4) the accident history claimant provided to Dr. Hauter, including that claimant did not lift heavy objects, could not identify one slip that started his pain, and reported the onset of his pain occurred while he was at home. Further, the arbitrator stated as follows:

"The Arbitrator specifically finds that [claimant's] histories and testimony are inconsistent, and that the only direct medical opinion was from Dr. Hauter. Dr. Hauter also suggested symptom magnification which is consistent with accident magnification of slipping 200 times in one day and not advising the [employer] immediately of experiencing pain after 200 slips in one single day. Dr.

Hauter['s intake history given by [claimant is] also inconsistent, for example in his reported history he stated he landed on the floor, and then in the next sentence he did not fall on the floor."

¶ 22 On July 23, 2012, the Commission, with one commissioner dissenting, reversed the arbitrator's decision, finding claimant sustained a back injury that arose out of and in the course of his employment and awarding benefits as stated. The Commission noted that, in reaching its decision, it relied on claimant's medical records and his testimony regarding the accident and his job duties. It specifically found claimant testified credibly with respect to his job duties and accident on January 17, 2011, and his testimony was unrebutted. The Commission noted claimant denied prior back injuries (aside from a remote motor vehicle accident) and determined that "working on a slippery floor and moving about in a hunched over position could cause [claimant] to slip repeatedly, as he testified." It concluded "repeated slips and twists led to [claimant's] back injury" and a "chain of events analysis support[ed] [a] causal connection."

¶ 23 Further, the Commission found claimant's accident descriptions, as set forth in his medical records, were consistent with claimant's testimony "that he slipped on numerous occasions, tweaking his back." Although it acknowledged claimant's initial chiropractic records, which indicated the onset of symptoms began after the flu, the Commission determined claimant credibly testified his symptoms occurred at work and not after a bout with the flu. It pointed out that the questionnaire identifying January 11, 2011, as the date of his accident was not introduced into evidence. Additionally, the Commission drew what it considered to be "the reasonable conclusion" that claimant's report that he slipped over 200 times in a single day was "a rough estimate" and "not meant to be taken literally." Finally, it stated as follows with respect to Dr. Hauter's opinions:

"[W]ith respect to [claimant's] back condition, Dr. Hauter largely based his causal connection opinion on the fact that [claimant] had several 'mini-slips' and could not identify 'one event that started the problem.' [Claimant's] testimony that he slipped on numerous occasions and tweaked his back with each slip, however, leads us to conclude that [claimant] suffered a back injury."

¶ 24 On July 26, 2013, the circuit court of Tazewell County reversed the Commission and reinstated the arbitrator's decision, denying claimant benefits. Specifically, the court determined the Commission's findings as to causation were against the manifest weight of the evidence. This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 On appeal, claimant argues the circuit court erred in reversing the Commission's decision that he proved his entitlement to benefits under the Act. He contends the Commission's decision was not against the manifest weight of the evidence.

¶ 27 "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). An injury generally arises "in the course of employment" when it occurs "within the time and space boundaries of the employment." *Sisbro*, 207 Ill. 2d at 203, 797 N.E.2d at 671. Further, an injury "arises out of" employment when "the injury had its origin in some risk connected with, or incidental to, the employment so as to create a causal connection between the employment and the accidental injury." *Sisbro*, 207 Ill. 2d at 203, 797 N.E.2d at 672.

¶ 28 "The determination of whether an injury arose out of and in the course of a claimant's employment is a question of fact for the Commission to resolve, and its finding in that regard will not be set aside on review unless it is against the manifest weight of the evidence." *Springfield Urban League v. Illinois Workers' Compensation Comm'n*, 2013 IL App (4th) 120219WC, ¶ 24, 990 N.E.2d 284. "For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent." *Springfield Urban League*, 2013 IL App (4th) 120219WC, ¶ 24, 990 N.E.2d 284.

¶ 29 We note the Commission is the "ultimate decisionmaker" in workers' compensation cases. *Roberson v. Industrial Comm'n*, 225 Ill. 2d 159, 173, 866 N.E.2d 191, 199 (2007). Further, "[i]t is within the province of the Commission to resolve disputed questions of fact, including those of causal connections, to draw permissible inferences from the evidence, and to judge the credibility of the witnesses." *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, ¶ 26, 993 N.E.2d 473. "[T]he Commission is not bound by the arbitrator's findings, and may properly determine the credibility of witnesses, weigh their testimony and assess the weight to be given to the evidence." *City of Chicago v. Illinois Workers' Compensation Comm'n*, 373 Ill. App. 3d 1080, 1096, 871 N.E.2d 765, 779 (2007). On review, "[t]he appropriate test is whether there is sufficient evidence in the record to support the Commission's finding, not whether this court might have reached the same conclusion." *Chicago Transit Authority v. Illinois Workers' Compensation Comm'n*, 2013 IL App (1st) 120253WC, ¶ 24, 989 N.E.2d 608.

¶ 30 Here, claimant testified, on January 17, 2011, the employer was understaffed and he had to perform the work of another employee in addition to his own job duties. As a result, claimant performed both interior and exterior detail work. The work he performed caused water

and "tire dressing" to mix together on the floor and the floor to become "extra slick." Claimant testified he slipped numerous times while working in a "hunched over" position and twisted or "tweaked" his back. As discussed, the Commission determined claimant sustained a "compensable accident" to which his current condition of ill-being was causally related. It determined claimant's "repeated slips and twists led to [his] back injury." While the evidence in this case may have been close, we cannot say an opposite conclusion from that of the Commission was "clearly apparent."

¶ 31 The Commission determined claimant testified credibly. It noted his testimony regarding his job duties and the circumstances surrounding his accident was unrebutted. We agree and find no evidence to dispute claimant's testimony that he was performing work he did not typically perform on the date of his accident, that the floor was "extra slick" as a result of claimant "dressing tires" in an atypical location, that he worked in a "hunched over" position, or that he slipped numerous times on the slick floor and twisted or "tweaked" his back as he caught himself to avoid falling.

¶ 32 The Commission also found claimant's testimony was supported by his medical records. We find this conclusion supported by the record and not against the manifest weight of the evidence. Although claimant's initial chiropractic records indicate the onset of his symptoms began after a bout with the flu, those same initial records also reflect that claimant reported he "[s]trained mid back from car detailing job on wet floors early part of January 2011." Thereafter, claimant provided similar accident histories each time he sought medical care, as reflected in his records from Proctor and his physical therapist, as well as Dr. Hauter's evaluation report. As determined by the Commission, those histories were consistent with claimant's testimony at arbitration. Further, we find no error in the Commission's determination that claimant's report of slip-

ping over 200 times was a "rough estimate" and "not meant to be taken literally." As noted by the Commission, claimant testified at arbitration that the figure "was [his] best guess because [he] couldn't keep [his] footing at all at work."

¶ 33 Although not addressed by the Commission, we note that the arbitrator's finding that claimant gave inconsistent accident histories to Dr. Hauter was not supported by the record. In reaching his decision, the arbitrator stated: "Dr. Hauter[']s intake history given by [claimant is] also inconsistent, for example in his reported history he stated he landed on the floor, and then in the next sentence he did not fall on the floor." In his report, Dr. Hauter recited the accident history provided to him by claimant and, presumably, the following section contains the "inconsistencies" referenced by the arbitrator:

"[Claimant] states that he works in a very tight space and that while maneuvering around cars he *slipped on tire dressing that was sprayed onto tires and landed on the floor*. He states that he had several slips during the day of work. *He states that he never fell to the floor* because the space was tight and he could catch himself on the wall or nearby objects." (Emphases added.)

We find a close reading of Dr. Hauter's report indicates he was referring to the "tire dressing" that landed on the floor after being sprayed onto the tires and not claimant landing on the floor after slipping. The record clearly shows claimant consistently denied that he actually fell all the way to the floor at any time when slipping on January 17, 2011. In fact, Dr. Hauter's recorded history is consistent with claimant's testimony and the histories he reported to other medical providers.

¶ 34 Finally, the Commission's decision indicates it did not find Dr. Hauter's opinions

persuasive. Dr. Hauter determined claimant suffered a lumbar muscle sprain but could not relate that condition to his work. The Commission noted Dr. Hauter's opinion was based on the fact that claimant reported multiple slips and could not identify "one event that started the problem." However, the Commission determined claimant's "testimony that he slipped on numerous occasions and tweaked his back with each slip" was sufficient to support a finding that claimant suffered a back injury. It was within the province of the Commission to weigh the evidence presented and the Commission was free to find Dr. Hauter's report and opinions were unpersuasive and assign them little weight. We find no error in the Commission's decision and additionally note the record contradicts another basis for Dr. Hauter's findings. Specifically, Dr. Hauter determined that "records of the initial treatment at the Chiropractor did not mention a trauma." As stated, however, those records actually reflect claimant reported that he "[s]trained mid back from car detailing job on wet floors early part of January 2011."

¶ 35 On appeal, the employer criticizes claimant for failing to present any medical causation opinions. However, "medical evidence is not an essential ingredient to support the conclusion of the *** Commission that an industrial accident caused the disability." *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63, 442 N.E.2d 908, 911 (1982). "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." *International Harvester*, 93 Ill. 2d at 63, 442 N.E.2d at 911.

¶ 36 In this case, the Commission found a "chain of events" analysis supported the finding of a causal connection. The record supports that conclusion. Specifically, claimant denied prior back injuries (aside from injury that resulted from a car accident several years earlier

when he was 12 or 13) and there is nothing in the record to indicate his work was affected by any injury or that he was receiving back-related medical treatment prior to January 17, 2011, the date of his alleged accident. Shortly after that date, however, claimant began seeking medical treatment for back pain that radiated into his legs and progressively worsened. He also consistently related his injuries to slipping on a wet floor at work. As discussed, the Commission was not bound to accept Dr. Hauter's opinions, even if his opinions were the only medical opinions in evidence.

¶ 37 Here, given the contradictory decisions of the arbitrator, Commission, and circuit court, it is clear that the evidence presented was conflicting and not overwhelmingly supportive of either claimant or the employer. Nevertheless, the Commission is the "ultimate decisionmaker" in workers' compensation cases and has the responsibility to determine witness credibility, weigh the evidence, and draw reasonable inferences therefrom. In this instance, the record contains support for the Commission's decision and it is not against the manifest weight of the evidence. Stated another way, an opposite conclusion from that of the Commission is not clearly apparent. As a result, we find the circuit court erred in reversing the Commission's decision and reinstating the arbitrator's denial of benefits.

¶ 38 III. CONCLUSION

¶ 39 For the reasons stated, we reverse the circuit court's judgment, reinstate the Commission's decision, and remand the matter for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327, 399 N.E.2d 1322.

¶ 40 Judgment reversed; award reinstated; cause remanded.