2011 IL App (1st) 110032WC-U

NO. 1-11-0032WC

IN THE APPELLATE COURT

OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

| | | |
|---|---|---|
| REYES GROUP, | ) | Appeal from |
| Appellant, | ) | Circuit Court of |
| v. | ) | Cook County |
| THE ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Francisco Navarro, Appellee). | ) | No. 10L50473 |
| | ) | Honorable |
| | ) | Elmer James Tolmaire, III, |
| | ) | Judge Presiding. |

JUSTICE McCULLOUGH delivered the judgment of the court.
Justices Hoffman, Hudson, Holdridge and Stewart concurred in the judgement.

**ORDER**

¶ 1 *Held*: Neither the Commission's causal connection decision nor its order that employer authorize prospective medical care was against the manifest weight of the evidence.

¶ 2 In 2003, claimant, Francisco Navarro, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2002)), seeking benefits from employer, Reyes Group. Following a hearing, the arbitrator found claimant sustained accidental injuries on September 2, 2003, that arose out of and in the course of his employment. He awarded claimant 37 weeks' temporary total disability benefits and medical expenses in the amount of $26,742.52. The arbitrator also ordered employer to pay penalties and attorney fees. The Workers' Compensation Commission (Commission) vacated the arbitrator's award of penalties and attorney fees but otherwise affirmed and adopted his decision. Employer sought no further review.

¶ 3 In 2008, a second arbitration hearing was held in the matter after claimant sought additional benefits under the Act. Following that hearing, the arbitrator determined claimant's condition of ill-being after the initial arbitration hearing was casually connected to his September 2003, work-related accident. He awarded claimant $873.14 in medical expenses and ordered employer to authorize medical treatment provided and recommended "by an appropriate pain clinic including any further evaluations necessitated by" claimant's treating doctor as a result of the pain clinic's treatment. The arbitrator also ordered employer to pay penalties an attorney fees. On review, the Commission vacated the arbitrator's award of penalties and attorney fees, agreed with the arbitrator's finding of a causal connection but modified his rationale, and otherwise affirmed and adopted the arbitrator's decision. The circuit court of Cook County confirmed the Commission's decision. Employer appeals, arguing (1) the Commission's decision that claimant's condition of ill-being after the initial arbitration proceedings was causally connected to his September 2003, work-related accident was against the manifest weight of the evidence and (2) the Commission's award of prospective medical care was against the manifest weight of the evidence. We affirm.

¶ 4 The parties are familiar with the facts presented and we discuss them only to the extent necessary to put their arguments in context. On appeal, employer first argues the Commission's finding of a causal connection between claimant's condition of ill-being after the date of the initial arbitration proceedings and his September 2003, work-related accident was against the manifest weight of the evidence. It maintains the record contains no evidence to support such a finding and, instead, shows claimant had recovered from his September 2003 injury by date of the initial arbitration hearings and returned to full duty work.

¶ 5 "In a workers' compensation case, the claimant has the burden of proving, by a preponderance of the evidence, all of the elements of his claim." *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 867, 923 N.E.2d 870, 878 (2010). It is the Commission's function "to decide questions of fact, judge the credibility of witnesses, and resolve

conflicting medical evidence." *R & D Thiel*, 398 Ill. App. 3d at 868, 923 N.E.2d at 878.

¶ 6 Whether a claimant's injury is causally connected to his employment is a question of fact for the Commission. *R & D Thiel*, 398 Ill. App. 3d at 867, 923 N.E.2d at 878. "Every natural consequence that flows from an injury that arose out of and in the course of the claimant's employment is compensable unless caused by an independent intervening accident that breaks the chain of causation between a work-related injury and an ensuing disability or injury." *Vogel v. Industrial Comm'n*, 354 Ill. App. 3d 780, 786, 821 N.E.2d 807, 812 (2005). "That other incidents, whether work-related or not, may have aggravated the claimant's condition is irrelevant." *Vogel*, 354 Ill. App. 3d at 786, 821 N.E.2d at 812.

¶ 7 On review, the Commission's factual determinations "will not be disturbed on review unless they are against the manifest weight of the evidence; that is to say, unless an opposite conclusion is clearly apparent." *R & D Thiel*, 398 Ill. App. 3d at 868, 923 N.E.2d at 878. "The relevant inquiry is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other might reach an opposite conclusion. *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 538-39, 865 N.E.2d 342, 353 (2007).

¶ 8 Here, the record contains sufficient support for the Commission's decision that claimant's back condition of ill-being following the initial arbitration proceedings was causally connected to his work accident. Claimant worked for employer, a cement contractor, as a driver and general laborer. On September 2, 2003, he injured his back at work while unloading wooden forms from a truck. Claimant received medical treatment for his injury. Although, in May 2004, Dr. Konstantin Slavin released claimant to return to full-duty work, evidence showed his lower back condition of ill-being had not fully resolved. In December 2004 and January 2005, the initial arbitration hearings were conducted in the matter. As noted by the arbitrator and Commission, at that time, claimant reported continued lower back symptoms, in that he "still ha[d] pain in his back," particularly when bending or lifting heavy objects. Claimant's medical records also show that, during follow-up visits with Dr. Slavin throughout the remainder of 2004, he continued

to report moderate levels of pain.

¶ 9 Dr. Slavin's more recent records also support the Commission's decision. In May 2006, claimant returned to Dr. Slavin in connection with his back pain. Dr. Slavin noted claimant's pain fluctuated over time. In February 2008, Dr. Slavin stated claimant had been "suffering from pain in his back going into his legs on both sides ever since his work-related injury in September 2003." He further noted that claimant underwent an MRI in December 2007 that revealed "exactly the same" findings as those he recorded in 2003. Dr. Slavin's impression was that claimant had "chronic lumbar spondylosis and foraminal stenosis" and "developed recent exacerbation of his longstanding symptoms." Even Dr. David Spencer, who reviewed claimant's medical records at employer's request, stated claimant's December 2007 MRI and his October 2003 MRI were "very similar" and "indicative of evidence that there ha[d] been no progressive change in the lumbar spine anatomy."

¶ 10 Employer maintains claimant's September 2003, work-related injury resolved by the time of the initial arbitration proceedings, noting claimant had returned to full-duty work and, thereafter, worked for several years in the concrete business. However, the record shows claimant was not performing the same job duties he performed prior to his September 2003 accident. Claimant's work for employer involved a great deal of heavy lifting, including carrying and placing wooden forms to assist with the pouring of concrete. Following his accident and medical treatment, claimant became self employed in the concrete business and worked mostly in a supervisory capacity. At the time of the initial hearings, claimant testified he worked only two or three days a week. Further, although he sometimes assisted his employees with finishing work, he only did so when necessary and reported that such work caused him terrible pain.

¶ 11 As the Commission noted, the record does not show the existence of an intervening accident or injury to claimant's lower back. Instead, it contains evidence that shows claimant's lower back symptoms continued even after he stopped receiving medical treatment in 2004 and was released to return to work. Evidence showed his back pain fluctuated and worsened until

he returned to Dr. Slavin for further treatment. The Commission found claimant's condition of ill-being was causally connected to his September 2003, work accident and its decision is not against the manifest weight of the evidence.

¶ 12 On appeal, employer also challenges the Commission's order that employer authorize and pay for claimant's prospective medical treatment. Under the Act, a claimant is entitled to receive benefits "for all the necessary first aid, medical and surgical services, and all necessary medical, surgical and hospital services thereafter incurred" so long as they are "reasonably required to cure or relieve from the effects of the accidental injury." 820 ILCS 305/8(a) (West 2008). "Prescribed services not yet performed or paid for are considered to have been 'incurred' within the meaning of the statute." *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 317, 901 N.E.2d 1066, 1082 (2009). "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." *Absolute Cleaning/SVMBL v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 463, 470, 949 N.E.2d 1158, 1165 (2011).

¶ 13 Here, the Commission ordered employer "to authorize any treatment provided by and recommended by an appropriate pain clinic including any further evaluations necessitated by Dr. Slavin as a result of this pain clinic treatment." Its award was based upon Dr. Slavin's recommendations for further treatment. Employer argues those recommendations were not definitive and "too vague" to warrant an award of prospective medical expenses. Employer, however, cites no legal authority for its position. Additionally, Dr. Slavin's recommendations for claimant's treatment were clear. He prescribed medication and recommended that, if the claimant's pain continued, he be seen and treated at an appropriate pain clinic. Claimant testified at arbitration that his medication did not fully relieve his pain. The Commission's decision that further treatment as recommended by Dr. Slavin was reasonable and necessary was not against the manifest weight of the evidence.

¶ 14 For the reasons stated, we affirm the circuit court's judgment.

¶ 15 Affirmed.