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2013 IL App (1st) 113646WC-U

Order Filed: February 19, 2013

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

RUSSELL J. MATROS,) Appeal from
Appellant,) Circuit Court of
v.) Cook County
THE ILLINOIS WORKERS' COMPENSATION) Nos. 09L51499
COMMISSION <i>et al.</i> (Exelon Corporation,) 09L51500
Appellee).)
) Honorable
) James C. Murray, Jr.
) 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 finding that claimant failed to prove his psychological disability was related to his right shoulder injury on April 23, 2002, or his left shoulder injury on October 3, 2003, was not against the manifest weight of the evidence.

¶ 2 On July 8, 2003, claimant, Russell J. Matros, filed an application for adjustment of claim (No. 03WC33033) pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2002)), seeking benefits from employer, Exelon Corporation (Commonwealth

Edison), for injuries suffered to his right shoulder on April 23, 2002. On October 23, 2003, claimant filed an application for adjustment of claim (No. 03WC51570) pursuant to the Act seeking benefits from employer for injuries suffered to his left shoulder and mind on October 3, 2003.

¶ 3 Following a consolidated hearing, an arbitrator accepted the parties agreement that claimant sustained injuries to his right shoulder on April 23, 2002, arising out of and in the course of his employment with employer (No. 03WC33033). Further, the arbitrator found claimant proved the April 23, 2002, accident to his right shoulder "was a contributing cause of the petitioner's present psychological condition of ill being." The arbitrator accepted the parties agreement that claimant be awarded temporary total disability (TTD) benefits from August 20, 2002, through February 10, 2003, and awarded claimant additional TTD benefits from July 2, 2003, through August 5, 2003, and penalties under sections 16, 19(k), and 19(l) of the Act (820 ILCS 305/16, 19(k), 19(l) (West 2006)), for employer's failure to pay TTD benefits from July 2, 2003, through August 5, 2003.

¶ 4 In case No. 03WC51570, the arbitrator found claimant proved he sustained injuries to his left shoulder on October 3, 2003, arising out of and in the course of his employment with employer. Further, the arbitrator found claimant proved the October 3, 2003, accident "was a contributing cause of the petitioner's present psychological condition of ill being." The arbitrator awarded claimant TTD benefits, medical expenses, and penalties under sections 16, 19(k), and 19(l) of the Act (820 ILCS 305/16, 19(k), 19(l) (West 2006)), for employer's failure to pay TTD benefits.

¶ 5 Employer filed a petition for review of the arbitrator's decisions before the Illinois Workers' Compensation Commission (Commission). On review, the Commission modified the arbitrator's decision (No. 03WC33033), finding claimant was suspended from his employment on July 2, 2003, through August 5, 2003, and not entitled to TTD benefits from July 2, 2003, through August 5, 2003. Further, the Commission found claimant's anxiety and depression unrelated to claimant's April 23, 2002, right shoulder injury. Accordingly, the Commission vacated the arbitrator's award of TTD benefits from July 2, 2003, through August 5, 2003, and the arbitrator's award of penalties for employer's failure to pay TTD benefits from July 2, 2003, through August 5, 2003. The Commission otherwise affirmed and adopted the arbitrator's decision.

¶ 6 In case No. 03WC51570, the Commission again modified the arbitrator's decision, finding "no causal connection between Petitioner's October 3, 2003, work injury and his current psychological condition of ill being." Accordingly, the Commission vacated the arbitrator's award of medical expenses "as those charges were incurred as a result of Petitioner's psychological condition of ill-being." Further, the Commission vacated the arbitrator's award of TTD benefits and penalties finding claimant's "lost time from work *** was related to Petitioner's psychological condition, or his unrelated right elbow injury and surgery." The Commission otherwise affirmed the arbitrator's decision.

¶ 7 Thereafter, claimant filed a petition seeking judicial review in the circuit court of Cook County and the court confirmed the Commission's decision.

¶ 8 Claimant appeals, arguing the Commission's finding that claimant failed to prove

his psychological disability was related to his right shoulder injury on April 23, 2002, or his left shoulder injury on October 3, 2003, was against the manifest weight of the evidence. We affirm.

¶ 9

I. BACKGROUND

¶ 10

The record on appeal is lengthy, numbering 23 volumes and 5,750 pages. The parties presented evidence over the course of 20 arbitration hearings beginning on August 29, 2005, and ending on February 6, 2007. The facts are well known to the parties and will be set out herein only as may be necessary for an understanding of our decision.

¶ 11

Claimant worked as an overhead electrician for employer. He began working for employer in 1979. It is undisputed that on April 23, 2002, the 42-year-old claimant was performing his work duties as a lamper, when he injured his right shoulder. A lamper is an overhead electrician who repairs and maintains streetlights. While replacing a mast arm, claimant lifted the mast with his right arm, felt a pop, and developed pain in his shoulder. He sought treatment from his personal physician, Dr. Ibrahim, who diagnosed a right shoulder sprain, prescribed Naprosyn, and released him to full-duty work. Claimant returned to Dr. Ibrahim on April 30, 2002. Dr. Ibrahim continued anti-inflammatory medication and prescribed physical therapy.

¶ 12

Claimant sought treatment with Dr. Laluya of the Excel Clinic on June 19, 2002. Dr. Laluya diagnosed a right shoulder impingement syndrome with possible labral injury, ordered a magnetic resonance imaging (MRI), and ordered work restrictions. Claimant underwent an MRI of the right shoulder on June 26, 2002. The MRI demonstrated findings suggestive of labral injury.

¶ 13 On July 13, 2002, claimant sought treatment for his right shoulder from Dr. Smith. Dr. Smith performed surgery on August 20, 2002. Dr. Smith's operative notes indicate he found a partial tear of the rotator cuff that he debrided and he also repaired a Bankart-type lesion. Claimant began physical therapy on September 9, 2002.

¶ 14 On January 14, 2003, claimant was examined by Dr. Koehler at employer's request. Dr. Koehler believed claimant could return to work with a 15-pound lifting restriction effective January 15, 2003. Claimant vacationed in Brazil and returned to light-duty work on February 11, 2003. Dr. Smith released claimant to full duty on March 19, 2003.

¶ 15 Employer paid claimant TTD benefits while claimant was off work and paid claimant's medical bills. In March 2003, claimant vacationed in Las Vegas and in May 2003, claimant went to the Kentucky Derby.

¶ 16 On May 8, 2003, claimant reported to his physical therapist that his right shoulder was "finally feeling better and stronger." Further, claimant reported no limitations and stated he had been doing some bench pressing at his gym. The physical therapist recorded the following note:

"Patient has been able to perform overhead lifting without limitations and with improved eccentric shoulder control. Patient demonstrates no limitations with any strengthening and reports no pain in his right shoulder with advanced activities such as throwing and bench pressing."

The physical therapist stated that claimant had reached maximum medical improvement and

discharged claimant from physical therapy.

¶ 17 Claimant continued to work full duty. According to Anthony Cameron, a construction superintendent for employer, employer developed a larger focus on street light repair and maintenance in approximately May 2003, stating "we weren't meeting our seven-day goal." Claimant's supervisor, Dan Gerry, met with claimant regarding his work productivity. Gerry advised claimant that employer was getting behind on fixing streetlights. Claimant told Gerry that he would do the best he could.

¶ 18 Claimant's work productivity declined and employer began surveillance of claimant while he was working. The surveillance showed the following:

"On June 13, 2003, the Petitioner was parked in one spot for one hour and 12 minutes (from 11:15 a.m. to 12:27 p.m.) For another hour and 12 minutes (from 1:00 p.m. to 2:12 p.m.) the Petitioner's vehicle was idle at another location; only at 2:12 p.m. did the Petitioner exit the truck to inspect or move equipment.

On June 19, 2003, the Petitioner's vehicle was parked at one location for 17 minutes before he got out to work at that site. Later, at another site, the vehicle was motionless for 10 minutes after the Petitioner had finished his outside work. At mid-day, between 11:50 a.m. and 12:30 p.m., the Petitioner's vehicle was stationary; throughout those 40 minutes the Petitioner did not exit the vehicle. Later, the Petitioner sat for at least 25 minutes at

another location without leaving his vehicle. He then drove back to ComEd.

On July 1, 2003, the Petitioner parked his vehicle at one site, but did not get out of it. Later he drove to another site, but did no outside work. Then, from 10:58 a.m. to 12:28 p.m. the Petitioner parked his vehicle but did not exit it. He could not be seen in the cab for an hour-and-a-half. At 12:28 p.m. he sat up in the driver's position. Six minutes and a short drive later, the Petitioner parked his truck again. From 12:34 p.m. to 1:05 p.m. he was seen sitting in the driver's seat. Within the next five minutes he was approached by two ComEd supervisors; they apparently ordered him back to the ComEd facility."

¶ 19 Following a meeting on July 1, 2003, claimant was suspended for what employer claimed was gross neglect of duty and what claimant claimed was retaliation.

¶ 20 Claimant treated with Dr. Ibrahim on July 17, 2003. He described feeling tightness in his chest, lack of interest, and depression. Dr. Ibrahim diagnosed anxiety and depression "secondary to the change of the patient's life, which is potential for him losing his job." He prescribed Lexapro and advised claimant to see a counselor.

¶ 21 Claimant treated with Dr. Smith on July 19, 2003. Claimant complained of pain in his right shoulder and some difficulty with overhead activities. Dr. Smith diagnosed mild impingement and recommended conservative treatment.

¶ 22 Claimant attended a follow-up meeting with his supervisors on August 5, 2003. Employer advised claimant that he was not meeting his work expectations. Claimant failed to report a vehicular accident, slept in his truck, and had a very poor safety record. Employer advised claimant that if his performance did not improve he would be terminated. He was then taken off of suspension and returned to work. Claimant did not immediately return, rather, he saw Dr. Ibrahim with complaints of illness and remained off work treating an illness until August 18, 2003.

¶ 23 In a medical examination report for commercial driver fitness determination completed on August 18, 2003, claimant indicated no nervous or psychiatric disorders, including severe depression, and no sleep disorders.

¶ 24 On September 3, 2003, claimant's supervisors accompanied claimant for a day of work in order to observe the amount of time it was taking him to replace overhead streetlights. Claimant testified that after that day of work, Cameron told him that he was an excellent employee. Cameron testified that after that day, he advised claimant that he did an excellent job when he worked.

¶ 25 Upon Cameron's inquiry, claimant stated he could fix three streetlights per hour. The supervisors then set out an expectation that claimant fix fifteen to twenty streetlights per day in a meeting on September 4, 2003. Claimant testified that this expectation was too high. Claimant's testimony, that the expectation was too high, was corroborated by the testimony of four present or past co-workers, Calvin Thompson, Richard Alvis, John Poland, and Thomas Langlois.

¶ 26 Claimant testified that he injured his left shoulder on October 3, 2003. While claimant lifted a box onto an overhead shelf, he experienced left shoulder pop and pain. Claimant reported the accident to his supervisor, Wayne Brezeau, and was sent to the Excel Medical Clinic. At Excel, Dr. Pillar examined claimant. Claimant gave Dr. Pillar a history of injuring his left shoulder at work earlier in the day. He described immediate pain in the shoulder. Dr. Pillar examined claimant and diagnosed a left shoulder strain. He prescribed ice and over-the-counter ibuprofen and returned him to regular-duty work.

¶ 27 Brezeau testified that on October 3, 2003, claimant called him and asked if he could go to the doctor because he had been overcompensating with his right shoulder and now his left shoulder hurt. Brezeau testified that claimant did not advise him over the phone that he had just hurt his left shoulder in a work-related accident. Brezeau later saw an accident report filled out by claimant alleging an injury to the left arm while lifting a street light head.

¶ 28 Claimant sought treatment with Dr. Smith on October 6, 2003. Dr. Smith examined claimant and noted pain at the horizontal level of 90 degrees and tightness on internal rotation. He recommended an MRI. Claimant continued to work.

¶ 29 Claimant sought treatment with Dr. Ibrahim on October 9, 2003. Claimant complained of having problems at work and sustaining an injury to his left shoulder. He also told Dr. Ibrahim that he was under a lot of stress, had been depressed lately, and had insomnia. He stated that he feared losing his job, and that he was being watched closely at work. Dr. Ibrahim recommended claimant see a psychiatrist. Dr. Ibrahim then stated that based upon claimant's level of anxiety, depression, and stress, he found it appropriate to find claimant

disabled at least on a short-term basis and noted claimant was not able to go back to work.

¶ 30 On October 23, 2003, claimant sought treatment with Dr. Moolayil, a psychiatrist. According to Dr. Moolayil, claimant complained of anxiety and depression, a lot of job stress, fear of losing his job, and inability to work since October 9, 2003. Dr. Moolayil diagnosed major depression and removed claimant from work. Dr. Moolayil prescribed medication and recommended psychotherapy with a counselor.

¶ 31 Claimant underwent an MRI of the left shoulder in November of 2003. Dr. Smith noted that study showed abnormalities, possible tears, and degeneration of the left shoulder. He prescribed physical therapy.

¶ 32 On November 11, 2003, claimant attended an appointment with Sarah Contour, a licensed clinical social worker. Contour testified that she provided psychotherapy to claimant.

¶ 33 Claimant continued to attend physical therapy during November and December. Claimant vacationed in Hawaii between December 11, 2003, and December 20, 2003.

¶ 34 In February 2004, claimant went on a 10-day vacation to Spain with a friend. He testified that they traveled by airplane, ate out, stayed in hotels, and traveled around Spain. He testified that he would go out on occasion and that in May 2004, he went to the Kentucky Derby.

¶ 35 Employer scheduled claimant for a Section 12 examination (see 820 ILCS 305/12 (West 2002)) with Dr. Reff for December 18, 2003. Claimant did not attend that appointment, and did not attend the rescheduled examination on January 20, 2004. Claimant did attend an examination with Dr. Reff on March 4, 2004. Claimant presented himself unshaven and unkempt. Claimant stated that he has little motivation to do anything and basically lies around

the house. Dr. Reff found claimant suffered from major depression. He also found that the condition was causally connected to his shoulder injuries and his treatment by management. He agreed with Dr. Moolayil's treatment plan.

¶ 36 After reviewing further records sent by employer, including surveillance, additional medical records, and claimant's personnel file, Dr. Reff issued another report, dated April 12, 2004. Dr. Reff wrote that the depression was not injury related but rather related to fear of being fired. Dr. Reff issued a third report on May 25, 2004. Dr. Reff discussed more surveillance that he viewed noting claimant's videotaped appearance and behavior were inconsistent with how claimant presented himself in Dr. Reff's office. He stated claimant was malingering and further, was capable of working.

¶ 37 Employer filmed claimant on July 9, 2004, jogging, playing baseball, throwing, and laughing. The physical therapy provider issued a report to Dr. Smith on July 15, 2004, noting claimant had achieved all physical therapy goals related to his shoulders. The note stated that he remained under care for his elbow surgery, but that he had not complained recently of shoulder pain. Claimant attended another examination with Dr. Reff on July 22, 2004. Dr. Reff reviewed additional surveillance and again opined that claimant was malingering and was not disabled from working.

¶ 38 Dr. Moolayil released claimant to work on July 26, 2004. On July 30, 2004, claimant was asked to attend a meeting with his employer and union representative in order to discuss his claimed inability to work between October 2003 and July 2004. Claimant declined to participate in the meeting without his attorney present. The meeting was concluded with

claimant being suspended pending a review of his possible misrepresentation of his condition while on leave. Later that day, claimant sought treatment at the emergency room for a panic attack. On September 21, 2004, employer discharged claimant from employment stating claimant had misrepresented his condition during a medical leave and exhibited poor work performance prior to taking leave. On October 23, 2004, Dr. Smith released claimant to work at full duty.

¶ 39 Following the consolidated hearing, the arbitrator found claimant proved his shoulder injuries were "a contributing cause of the petitioner's present psychological condition of ill being." Employer filed a petition for review of the arbitrator's decisions before the Commission. On review, the Commission found claimant's anxiety and depression unrelated to his shoulder injuries. Thereafter, claimant filed a petition seeking judicial review in the circuit court of Cook County and on November 10, 2011, the court confirmed the Commission's decision.

¶ 40 II. ANALYSIS

¶ 41 We begin by noting that claimant's brief violates the requirements of Illinois Supreme Court Rule 341(h)(6) (eff. Sept.1, 2006). Rule 341(h)(6) requires that the statement of facts in an appellant's brief "contain the facts necessary to an understanding of the case, stated accurately and fairly without argument or comment." Ill. S. Ct. R. 341(h)(6) (eff. Sept.1, 2006). Claimant's statement of facts contains argumentative language and citations to case law, which is inappropriate for a statement of facts and against the mandates of Rule 341(h)(6).

¶ 42 Where violations of supreme court rules are so flagrant as to hinder or preclude review, the striking of a brief in whole or in part may be warranted. *Merrifield v. Illinois State*

Police Merit Board, 294 Ill. App. 3d 520, 527, 691 N.E.2d 191, 197 (1997). We conclude claimant's violation of Rule 341(h)(6) does not hinder our review of the case since we reviewed the record as a whole in addressing the merits of this appeal.

¶ 43 Claimant argues that the Commission applied the wrong legal standard in finding no causal connection between claimant's shoulder injuries and his psychological condition of ill being. Specifically, claimant argues the Commission erred when it did not find claimant's "psychological injuries were linked to his shoulder injuries."

¶ 44 The parties disagree as to the proper standard of review. Claimant argues that the Commission misapplied "the law of causality" to make its factual determinations, and therefore a *de novo* standard is appropriate. Employer disagrees and argues reviewing courts examine the Commission's factual findings under a deferential standard. Whether a causal connection exists between a claimant's condition of ill-being and his employment is a question of fact for the Commission, and a reviewing court will overturn the Commission's decision only if it is against the manifest weight of the evidence. *Certi-Serve, Inc. v. Industrial Comm'n*, 101 Ill. 2d 236, 244, 461 N.E.2d 954, 958 (1984). A finding of fact is contrary to the manifest weight of the evidence only when an opposite conclusion is clearly apparent. *Swartz v. Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086, 837 N.E.2d 937, 940 (2005). The 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. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450, 440 N.E.2d 90, 93 (1982).

¶ 45 To obtain compensation under the Act, a claimant bears the burden of proving by

a preponderance of the evidence that he has suffered a disabling injury arising 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). The "arising out of" component addresses the causal connection between a work-related injury and the claimant's condition of ill-being. *Sisbro*, 207 Ill. 2d at 203, 797 N.E.2d 665. A claimant need prove only that some act or phase of his employment was a causative factor in his ensuing injury. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592, 834 N.E.2d 583, 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*, 207 Ill. 2d at 205, 797 N.E.2d at 673.

¶ 46 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. *Teska v. Industrial Comm'n*, 266 Ill. App. 3d 740, 742, 640 N.E.2d 1, 3 (1994). An intervening cause is one occurring entirely independent of a prior cause. *Harper v. Industrial Comm'n*, 24 Ill. 2d 103, 108, 180 N.E.2d 480, 482 (1962). "When a first cause produces a second cause that produces a result, the first cause is the cause of that result." *Harper*, 24 Ill. 2d at 108, 180 N.E.2d at 482.

¶ 47 The Commission appropriately applied the causation principles discussed above in finding no causal connection between claimant's shoulder injuries and his psychological condition. It is undisputed that claimant suffered a right shoulder injury on April 23, 2002. Dr. Smith performed surgery on August 20, 2002, and released claimant to full-duty work on March

19, 2003. Claimant reported overhead lifting without limitations to his physical therapist on May 8, 2003, and no right shoulder pain with advanced activities such as throwing and bench pressing. The physical therapist stated that claimant had reached maximum medical improvement and discharged claimant from physical therapy.

¶ 48 Claimant's work productivity declined and in approximately June 2003, employer began surveillance of claimant while he worked. Following a meeting on July 1, 2003, employer suspended claimant for gross neglect of duty.

¶ 49 Claimant treated with Dr. Ibrahim on July 17, 2003. Claimant reported to Dr. Ibrahim that he "was asked to leave work and stay home." He had not heard from employer for more than two weeks and was very anxious. Claimant described feeling some tightness in his chest, insomnia, irritability, lack of interest, and depression. Dr. Ibrahim diagnosed anxiety and depression "secondary to the change of the patient's life, which is potential for him losing his job." He prescribed Lexapro and advised claimant to see a counselor.

¶ 50 The Commission found "Dr. Ibrahim's office notes indicate Petitioner's condition is attributable to disciplinary action taken against Petitioner, and Respondent's management style." Further the Commission found "no indication in Dr. Ibrahim's office notes that Petitioner's condition of ill-being was attributable to Petitioner's April 23, 2002, work related shoulder injury."

¶ 51 There is sufficient evidence in the record to support the Commission's finding that claimant's psychological injuries were not the direct and natural result of his right shoulder injury. Based on the record presented, the Commission's decision is not against the manifest

weight of the evidence.

¶ 52 With regard to whether or not there exists a causal connection between claimant's left shoulder injury and his "alleged psychological problems," the Commission relied on Dr. Reff's opinion in finding "no causal connection between Petitioner's October 3, 2003, work injury and his current psychological condition of ill being." Dr. Reff first examined claimant on March 4, 2004. Claimant presented himself unshaven and unkempt. Although claimant reported to Dr. Reff that he had little motivation to do anything and basically laid around the house, the record shows claimant vacationed in Hawaii between December 11, 2003, and December 20, 2003, and vacationed in Spain in February 2004.

¶ 53 After viewing surveillance, additional medical records, and claimant's personnel file, Dr. Reff issued a report dated April 12, 2004. Dr. Reff wrote that the depression was not injury related, but rather related to fear of being fired. Dr. Reff issued a third report on May 25, 2004. Dr. Reff discussed additional surveillance that he viewed and that claimant's videotaped appearance and behavior were inconsistent with how claimant presented himself in Dr. Reff's office. He opined that claimant was malingering and capable of work. The Commission found Dr. Reff credible. 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, 223 (1980). There is sufficient evidence in the record to support the Commission's finding that claimant's "alleged psychological problems" were not the direct and natural result of his left shoulder injury. Based on the record presented, the Commission's decision was not against the manifest weight of the evidence.

¶ 54

III. CONCLUSION

¶ 55 For the reasons stated, we affirm the circuit court's judgment confirming the Commission's decision.