2014 IL App (1st) 123432WC-U

Workers' Compensation
Commission Division
Order Filed: February 24, 2014
NO. 1-12-3432WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

MERIDIAN EXPRESS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 12-L-50344
	)	
ILLINOIS WORKERS' COMPENSATION COMMISSION *et al.* (Charles Robinson, Defendant-Appellant).	)	Honorable Margaret Ann Brennan, Judge, presiding.

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

ORDER

¶ 1 *Held*: The Illinois Workers' Compensation Commission's findings that the claimant sustained an injury arising out of and in the course of his employment and that the claimant's current condition of ill-being was causally related to the accident were not against the manifest weight of the evidence.

¶ 2 The claimant, Charles Robinson, filed an application for adjustment of claim pursuant to the Illinois Workers' Compensation Act (the Act), 820 ILCS 305/1 *et seq*. (West 2008), against his employer, Meridian Express, seeking workers' compensation benefits for injuries to his back and neck he allegedly sustained at work. The claim proceeded to an expedited

arbitration hearing under section 19(b) of the Act, 820 ILCS 305/19(b) (West 2008). The arbitrator found in favor of the claimant and awarded benefits, but denied the claimant's request for penalties under sections 19(k), and 19(l) of the Act (820 ILCS 305/19(k), (l) (West 2008)) and for attorney fees under section 16 of the Act (820 ILCS 305/16 (West 2008)).

¶ 3 The claimant appealed the arbitrator's decision to deny penalties to the Illinois Workers' Compensation Commission (Commission). The employer also appealed the arbitrator's decision awarding benefits to the Commission, which unanimously affirmed and adopted the arbitrator's decision in its entirety. The employer then appealed to the circuit court, which set aside the Commission's decision. The circuit court found that the claimant failed to establish causation and therefore the Commission's decision was against the manifest weight of the evidence. The claimant appeals the circuit court's judgment.

¶ 4 STATEMENT OF FACTS

¶ 5 The following evidence was presented at the arbitration hearing. The claimant was employed as a truck driver by the employer. The claimant's job duties included picking up and delivering trailers to various locations as determined by the employer. On the morning of Friday, January 18, 2008, the claimant picked up a truck at his employer's facility. He drove the truck to another location to pick up an empty trailer to be loaded at a customer's facility. At the hearing he testified that while he was in the process of hooking up the empty trailer to his truck, he "slipped and fell backwards." The claimant stated that after he fell, he felt a dull pain. He testified that after sitting for a few moments, he pulled himself into the truck and drove the trailer to the customer. The claimant testified that upon arrival he informed the clerk in the customer's shipping office that he was having problems getting out of the truck. He stated that he could not lift his leg to get out of the truck. The claimant

testified that the shipping clerk picked him up on a golf cart because he "couldn't walk" and drove him to the dock to count the load as the customer loaded the truck. The claimant stated that the shipping clerk then assisted him back into his truck, and the claimant left the customer's facility to deliver the load.

¶ 6 The claimant testified that he called on his two-way radio and advised the dispatcher that he was hurt. He stated that he told the dispatcher, "I couldn't get out of the truck and I didn't know what was wrong with me. I couldn't move my legs." Nevertheless, the claimant delivered the loaded truck to its destination and picked up another trailer. The claimant went to yet another facility to pick up a load and dropped it off. He reported completion of his delivery to the dispatcher and once again told the dispatcher he was hurting and was ready to come in. However, the claimant did not return to the employer's location, but drove out to pick up and deliver one more load. After delivering it, the claimant returned to the employer's office trailer at approximately 9:30 p.m. to check out. The claimant testified that he advised the evening dispatcher of what had happened and that he was hurting. He testified that he stated to the dispatcher, "I couldn't walk. That I could hardly walk." He claimed he was not given forms to fill out when he reported his injury.

¶ 7 The claimant stated that over the weekend he attempted to treat the pain with hot baths, ointments, and rub downs, but did not get better. He testified that he returned to work on Monday, January 21, 2008, and advised the employer of his condition. The claimant was not assigned work that day and returned home. He claimed that he continued to treat with home remedies over the next few days, without success.

¶ 8 On January 26, 2008, the claimant sought medical care at Advocate South Suburban Hospital Emergency Room. He advised the medical staff that he fell "about a week ago." The claimant had CT scans taken of his back and neck. The claimant was released with

medication and advised to follow up with his doctor.

¶ 9 On February 7, 2008, the claimant saw Dr. Anthony Rivera. Dr. Rivera noted that "approximately three weeks ago, while at work [the claimant] was cranking a trailer when he slipped and fell backwards landing on his back." Dr. Rivera prescribed physical therapy, Motrin, and Baclofen, and ordered the claimant not to return to work. He ordered magnetic resonance imaging (MRI) scans of the claimant's neck and lower back. Dr. Rivera read the MRI reports and recorded in his March 13, 2008, patient note that the scans were "significant for cervical stenosis causing myelomalacia and also lumbar stenosis. Also, with spinal cord compression most marked at C3-C4 with associated cord edema and spinal stenosis at T11-T12 with spinal cord edema versus myelomalacia." After reviewing the MRI reports, Dr. Rivera referred the claimant to Dr. Thomas Hurley, a neurosurgeon.

¶ 10 On March 5, 2008, the claimant reported at his initial visit to Dr. Hurley that he "[s]lipped and fell at work January 2008." Dr. Hurley examined the claimant, reviewed the diagnostic studies, and recommended a multi-level cervical fusion. He prescribed a neck collar and ordered the claimant to remain off work. The claimant did not elect to have surgery at that time, but he testified at the hearing that he would like to have the surgery recommended by Dr. Hurley.

¶ 11 The claimant continued to see Dr. Rivera and treat conservatively with medication and physical therapy. Ultimately the claimant was prescribed a quad cane and a TENS unit. The claimant remained off work during this time. At some point the claimant began receiving TTD benefits although it is unclear from the record when the benefits began.

¶ 12 On May 1, 2008, the claimant underwent a section 12 exam performed by Dr. Sean Salehi on behalf of the employer. The claimant reported to Dr. Salehi that he was injured at work on January 18, 2008, when he "slipped and fell backwards onto ice and landed on a pile

of bricks." Although Dr. Salehi disagreed with Dr. Hurley's recommendation as to the specific procedure to be performed, he referred to the claimant's condition as "a surgically urgent matter" and recommended that "until his surgical treatment [the claimant] should not work." In his report, Dr. Salehi opined:

> "Based on what the [claimant] describes as having no prior similar episodes and the fact that he reported the injury to the delivery location on the same day (which subsequently notified his place of employment the same day), and also notifying his work 4 days later when he returned to work, it appears that his symptoms are as a result of the work-related injury."

¶ 13 The claimant continued conservative treatment through 2008 and into early 2009. On March 12, 2009, the claimant underwent a functional capacity evaluation (FCE). The FCE report indicated that the claimant could perform light duty work with weight restrictions including occasional lifting of 37 pounds from desk to chair, 37 pounds from chair to floor, and 15 pounds above his shoulders, occasional pushing/pulling 106 pounds, and occasional carrying 22 pounds. It was noted in the FCE report that the claimant was employed as a truck driver but that the claimant's capabilities did not meet the physical demand level required for that job.

¶ 14 On May 21, 2009, Dr. Salehi issued a supplemental report releasing the claimant to return to light duty work within the restrictions outlined in the FCE. The claimant testified that he received a call from his attorney indicating that an offer had been made for the claimant to return to light duty work. The claimant testified that he contacted the employer and indicated that he could not do the job. Following the job offer, the employer terminated the claimant's TTD benefits.

¶ 15 Despite the fact that Dr. Salehi indicated the claimant was capable of returning to light

duty work within the restrictions of the FCE, Drs. Rivera and Hurley disagreed and reiterated their recommendations that the claimant not return to work. Dr. Hurley stated in his August 25, 2009, office note:

> "I have renewed my recommendation that [the claimant] needs surgery or he assumes the risk that eventually he will become paralyzed if nothing is done. I do not believe that with his spinal cord injury and his cervical myelopathy that he is safe to be in any work environment. He would be a danger to himself and to his place of employment. Specifically I do not agree that [the claimant] can do general janitorial work, sweeping, mopping, cleaning and sanitizing washrooms, dusting, vacuuming, yard work/clean-up and other general light duty office work."

¶ 16 The claimant has not worked in any capacity since his injury and has continued with physical therapy during this time.

¶ 17 On July 9, 2009, the claimant was involved in an automobile accident. The claimant testified that he was making a left turn when his legs wouldn't "respond to the gas," and he was hit by another car. The claimant testified that he did not seek medical treatment as a result of the accident, although he saw Dr. Rivera on at least two occasions in July 2009 for follow up care related to the work injury. He testified that he has not received medical treatment for any reason since 2009.

¶ 18 On cross examination the claimant testified that he kept a trip sheet that documented his stops during the course of the day. When asked whether there was a section on the trip sheet to record various remarks pertaining to each stop, the claimant testified that there was a section labeled "Remarks Waiting Time" which he used to record waiting times, if any, at a stop. The trip sheet, which was admitted into evidence, documented that the claimant had worked 14 hours on the date of the accident.

¶ 19 Laura Cerda was the office manager and a fill-in dispatcher for the employer. Ms. Cerda was working on the evening of January 18, 2008, when the claimant returned to the office trailer. She explained that at the end of the day drivers would drop off their paperwork, including their trip sheet. She testified that she observed the claimant turn in his paperwork and do his normal checkout, but that she did not observe anything out of the ordinary about the claimant on that date. Ms. Cerda testified that the claimant did not report an injury to her nor did she overhear him report an injury to anyone in her presence. She testified that she did not receive a call from any customer reporting that the claimant was injured on the job. Ms. Cerda explained that if an employee reported an injury while on the road, the employer's policy was to assess the severity of the injury and then send the employee for medical treatment at Concentra Medical Center. When an injury occurred, an I-45 form, Employer's First Report of Injury, would be completed and sent to the employer's workers' compensation carrier.

¶ 20 Ms. Cerda testified that she was also present on Monday, January 21, 2008, when the claimant reported to work but that the claimant did not advise her that he was injured, nor did she prepare any paperwork related to a work injury. She testified that she observed the claimant receive a one week suspension for reporting to work late on that date. Ms. Cerda testified that she also was present on Friday, January 25, 2008, when the claimant came in to pick up his paycheck and that she did not observe anything out of the ordinary about the claimant.

¶ 21 Dennis James, owner and sole shareholder of the employer company, testified that the claimant did not report to anyone at the company that he slipped and fell on January 18, 2008. Mr. James testified that it was his understanding that the claimant was suspended from work for one week beginning Monday, January 21, 2008, for showing up late to work,

although the claimant denied that he was late for work or suspended. On February 12, 2008, Mr. James became aware of the claimant's allegations of a work-related injury, and on February 13, 2008, he filled out an I-45 form although he claimed he did not know the details related to the claimant's injury at that time.

¶ 22 Mr. James confirmed at the hearing that a job offer was made to the claimant. He testified that the duties included "janitorial, sweeping, mopping, clean and sanitize restrooms, dusting, wiping, vacuuming, yard clean up and other general office duties that are within his restrictions." During cross-examination, Mr. James provided a description of the employer's office trailer. He stated that the office trailer was about eight to ten feet wide and that four or five people worked in the trailer. He explained that the office was small enough that people could hear one another speak on the radio. Mr. James also testified that at the time the job offer was extended to the claimant the trailer might not have had a bathroom. He further testified that the yard in which the trailer sat did not belong to the company. Mr. James testified that the rate of pay for the job offer was at the prevailing rate. When asked on cross-examination whether the employer agreed to pay the claimant his prevailing rate of $38,146.00 per year to perform the duties within a trailer eight hours a day, Mr. James replied, "I did not testify eight hours a day, counselor."

¶ 23 On April 14, 2011, the arbitrator issued a decision. Although the claimant's request for penalties was denied, the arbitrator found that an accident occurred that arose out of and in the course of the claimant's employment, that the claimant's condition of ill-being was causally related to the injury, and that the medical services provided to the claimant were reasonable and necessary. The arbitrator ordered the employer to pay $36,942.35 for past medical services. The employer was also ordered to pay prospective medical treatment consisting of the surgery recommended by the claimant's treating physician, as well as any

appropriate follow up medical treatment. The arbitrator determined that the claimant was entitled to TTD benefits for the period of January 19, 2008, through the date of the hearing.

¶ 24 The claimant appealed the arbitrator's decision to deny penalties to the Commission, and the employer appealed to the Commission challenging the arbitrator's findings in favor of the claimant. The Commission issued a decision unanimously affirming and adopting the arbitrator's decision in its entirety. The employer appealed to the Circuit Court of Cook County, which set aside the Commission's decision. The circuit court found that the claimant failed to establish a causal connection between his current condition of ill-being and his alleged work accident and, therefore, the Commission's decision was against the manifest weight of the evidence. The circuit court opined, "The Commission relied in large part on the credibility of [the claimant's] narrative as a basis for its findings," and in doing so, "used a fraction of the evidence." In support of its finding that the Commission erred, the circuit court pointed to "inconsistencies in [the claimant's] narrative, the lack of corroborating evidence, and the significant contradictory evidence." The claimant filed this timely appeal claiming the circuit court erred in reversing the Commission's decision.

¶ 25 ANALYSIS

¶ 26 On appeal the claimant argues that the circuit court erred in reversing the Commission's finding that he sustained an injury arising out of and in the course of his employment. We agree.

¶ 27 "[A] reviewing court must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn, nor should a court substitute its judgment for that of the Commission unless the Commission's findings are against the manifest weight of the evidence." *Sisbro v. Industrial Comm'n*, 207 Ill. 2d 193, 206, 797 N.E.2d 665, 673 (2003). "Whether this court might have reached the same conclusion is not

the test of whether the Commission's determination is supported by the manifest weight of the evidence." *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866, 923 N.E.2d 870, 877 (2010). "Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination." *Id.* "It 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.

¶ 28 "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*, 207 Ill. 2d at 203, 797 N.E.2d at 671. The determination of whether a claimant's injury arose out of and in the course of his employment is a question of fact for the Commission which will not be set aside unless the decision is against the manifest weight of the evidence. *Illinois Consolidated Telephone Company v. Industrial Comm'n*, 314 Ill. App. 3d 347, 349, 732 N.E.2d 49, 51 (2000). The "arising out of" component refers to the causal connection between a work-related injury and the claimant's condition of ill-being. *National Freight Industries*, 2013 IL App (5th) 120043WC, ¶ 25, 993 N.E.2d 473. "A claimant's testimony, standing alone, may support an award where all of the facts and circumstances do not preponderate in favor of the opposite conclusion." *Shafer v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100505WC ¶ 35, 976 N.E.2d 1.

¶ 29 Here, there is sufficient evidence in the record to support the Commission's finding that the claimant sustained a work-related injury. In support of its finding that an accident occurred that arose out of and in the course of the claimant's employment, the Commission

highlighted the claimant's consistent history of a January 18, 2008, work-related fall given to various medical providers. In addition, the Commission noted that the claimant's testimony regarding his work-related injury remained consistent on direct as well as cross examination. Although the circuit court did not find the claimant's testimony credible, it was within the province of the Commission to judge the claimant's credibility and to conclude that the claimant sustained a work-related injury. The Commission also observed in its determination that the employer failed to provide any proof at the hearing that disputed the claimant's testimony regarding his work-related injury, and noted that the employer's own section 12 examiner, Dr. Salehi, reported that it appeared that the claimant's symptoms were a result of a work-related injury.

¶ 30 The employer contends that the claimant did not suffer a work-related accident but rather was injured some time during his one week suspension since it was not until after this week off of work that the claimant first sought medical treatment. In support of this contention the employer identified conflicting testimony given by other witnesses. Specifically, the employer points to Ms. Cerda's testimony that the claimant did not appear to be injured on the occasions when she saw him following the alleged injury. The employer also noted that both Ms. Cerda and Mr. James testified that the claimant failed to report a work injury either on January 18, 2008, or the following Monday when he showed up for work after the alleged injury. We cannot say that all of the facts and circumstances preponderate in favor of the opposite conclusion. It is obvious that the Commission, faced with conflicting testimony, rejected the employer's evidence and resolved this conflict in favor of the claimant. We hold that the Commission's credibility findings were not against the manifest weight of the evidence.

¶ 31 The claimant next argues that the circuit court erred in reversing the Commission's

finding that his current condition of ill-being was causally related to the work injury. We agree.

¶ 32 In resolving disputed issues related to causation, it is the function of the Commission to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence. *Shafer*, 2011 IL App (4th) 100505WC ¶ 38, 976 N.E.2d 1.

¶ 33 "To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries." *Id.* The Commission's factual finding on causation will be overturned only when it is against the manifest weight of the evidence. *Id.* "The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion." *Id.*

¶ 34 "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." *Shafer*, 2011 IL App (4th) 100505WC ¶ 39, 976 N.E.2d 1 (citing *International Harvester v. Industrial Comm'n*, 93 Ill. 2d 59, 63-64, 442 N.E.2d 908, 911 (1982)). In finding that the claimant's condition of ill-being was causally related to the work injury, the Commission underscored the claimant's consistent history of how and when the fall occurred, the pain he experienced following the fall, and the subsequent medical treatment. The claimant testified that he experienced "dull pain" after he fell, and that by the time he reached the customer's facility later that morning, he was having problems lifting his leg to get out of the truck. The evidence established that eight days after he fell, the claimant sought medical care after home remedies failed. The employer proffered no evidence at the hearing to refute the claimant's

testimony that his current condition of ill-being was causally related to the work injury. There was no evidence presented of significant past medical history that would contradict the claimant's narrative. There is support in the record for the Commission's finding of a causal nexus between the accident and the employee's injury. Accordingly, we find that the Commission's decision is not against the manifest weight of the evidence.

¶ 35 CONCLUSION

¶ 36 For the foregoing reasons, the judgment of the circuit court is reversed, the Commission's decision is reinstated, and this cause is remanded to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327, 399 N.E.2d 1322 (1980).

¶ 37 Judgment reversed; award reinstated.

¶ 38 Remanded with directions.