2014 IL App (1st) 130740WC-U

Workers' Compensation
Commission Division
Order filed: March 17, 2014

No. 1-13-0740WC

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

EDMUND PANGALLO,	)	Appeal from the Circuit Court
	)	of Cook County.
	)	
Appellee,	)	
	)	
v.	)	No. 12-L-50937
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al.*,	)	Honorable
	)	Robert Lopez Cepero,
(Testa Produce, Appellant).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The Commission's finding, that the claimant failed to prove his injury was causally connected to his workplace accident, was against the manifest weight of the evidence.

¶ 2 Testa Produce (Testa) appeals from the circuit court order setting aside the decision of the Workers' Compensation Commission (Commission) which found that the claimant, Edmund Pangallo, had failed to prove that his right wrist injury was causally connected to his workplace

accident. For the reasons that follow, we affirm the judgment of the circuit court of Cook County.

¶ 3 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on May 23, 2011. The evidence included the testimony of the claimant and the claimant's written medical records.

¶ 4 The claimant testified that, on October 3, 2008, he was working as a delivery truck driver for Testa. As he was lifting a case of apples while walking down stairs, he fell about 10 feet and broke his right wrist in two places and injured his lower back. He immediately sought emergency room treatment at Rush University Medical Center, where he was released the same day. The emergency room report indicated that the claimant was discharged with four diagnoses: "Closed Colles' Fracture;" intervertebral lumbar disc disorder with myelopathy, diabetes without complications, and "encounter for long-term (current) use of insulin." An x-ray taken on that day showed two fractures. The first fracture was located within the "ulnar aspect of the distal radial metadiaphysis" and was "complex/comminuted/minimally displaced/with spiral and longitudinal direction and extension to the radiocarpal joint space." The second fracture was located in the "ulnar styloid, transverse and minimally displaced."

¶ 5 On October 6, 2008, the claimant was treated by Dr. Robert Groya, an orthopedist, who put his arm in a cast and ordered weekly x-rays to monitor the healing. The claimant had x-rays and saw Dr. Groya on October 13, 20, and 27, at which time he was given a short-arm cast. On November 3, the claimant had x-rays and saw Dr. Groya, who released the claimant to light-duty work using his left hand only. The claimant had additional x-rays and saw Dr. Groya on

November 10 and 17, at which time physical therapy was ordered. The claimant underwent physical therapy treatments beginning in November 2008, and, on December 22, 2008, Dr. Groya noted that the claimant needed additional physical therapy because his wrist was so stiff that he could not make a fist. The claimant continued with the physical therapy sessions. On February 2, 2009, Dr. Groya noted that the claimant's wrist was still stiff, that "his finger joints especially the MP and PIPs don't flex all the way," and that more physical therapy was needed.

¶ 6 At Testa's request, the claimant was examined by Dr. Michael Cohen on February 26, 2009. Dr. Cohen stated that he believed the claimant's wrist fracture was caused by his October 3, 2008, fall from the ladder, and believed that his current treatment was reasonable and necessary.

¶ 7 After that examination with Dr. Cohen, the claimant continued physical therapy and treating with Dr. Groya. On March 6, 2009, Dr. Groya noted that the claimant still had poor range of motion in the wrist, although the flexibility in his fingers had improved. He stated that the claimant's x-rays showed continued healing and possible "remodeling at the fracture site." Dr. Groya noted that there was marked narrowing of the radiocarpal joint, the ulnar styloid had not healed and probably would remain a fibrous union, and that the claimant's main complaint was the inability to close his hand. Dr. Groya ordered more physical therapy. On March 16, 2009, Dr. Groya released the claimant to light-duty work.

¶ 8 On April 13, 2009, Dr. Groya noted that the claimant's complaints indicated posttraumantic carpal tunnel syndrome, that his Phalen test was normal, and that he had decreased sensation to light touch in his right four fingers and his thumb.

¶ 9 On April 23, 2009, the claimant underwent an EMG study with Dr. Kenneth Holmes. In the EMG report, Dr. Holmes stated that the claimant denied having problems with his right hand and wrist before the accident, but now complained of a cold sensation and tingling in the right hand's second, third, fourth, and fifth fingers. Upon physical examination, Dr. Holmes noted that the claimant had decreased sensation to pinpricks in the right fingers, decreased range of motion in the fingers and wrist of the right hand, and a negative Tinel over the carpal tunnel region and the cubital tunnel region. In the EMG report, Dr. Holmes stated that he compared the left arm to the right arm to determine whether the claimant's abnormal nerve conduction was secondary to an underlying neuropathy possibly related to his long history of diabetes or whether it was secondary to the trauma. Because the left arm showed similar abnormalities, Dr. Holmes concluded that the claimant had neuropathy. He also concluded that the claimant had bilateral carpal tunnel syndrome.

¶ 10 On May 11, 2009, Dr. Groya noted that, based on the claimant's EMG results, he probably had carpal tunnel syndrome. Although Dr. Holmes diagnosed the claimant with peripheral neuropathy due to his diabetes, Dr. Groya disagreed because the claimant did not have any numbness or tingling in his hand before the accident and did not have symptoms of neuropathy in his feet. He admitted, however, that, while the claimant denied having had any signs of numbness or tingling before the wrist fracture, the EMG suggested diabetic neuropathy was present. Dr. Groya ordered a cortisone injection into the carpal tunnel. In June 2009, Dr. Groya noted that the cortisone injection did not provide any relief for the claimant and, in fact,

his symptoms had worsened. Dr. Groya stated that he wanted the claimant to get a second opinion before opting for carpal tunnel surgery.

¶ 11 Upon Dr. Groya's referral, the claimant saw Dr. William Heller, another orthopedist, on June 18, 2009. Dr. Heller examined the claimant's right hand and observed he had decreased range of motion in his fingers, swelling in the fingers and wrist, and some pain to the touch. He also reviewed the claimant's x-rays, finding he had a healed distal radial fracture with an ulnar styloid avulsion injury most likely comprising a triangular fibrocartilage complex (TFCC) attachment. The x-rays also showed some early posttraumatic arthritis. Dr. Heller reviewed the EMG study, which according to Dr. Heller, seemed to demonstrate more polyneuropathy from diabetes rather than true carpal tunnel syndrome, although there was some superimposed carpal tunnel syndrome. Dr. Heller recommended that the claimant have surgery to repair the TFCC tear.

¶ 12 The claimant then resumed treatment with Dr. Groya, who postponed the TFCC surgery until the claimant's blood sugar levels could be stabilized. Dr. Groya referred the claimant to Dr. Anthony DeLorenzo for diabetes treatment. Dr. DeLorenzo examined the claimant on July 16, 2009, and noted that, other than his right wrist pain and high blood sugar levels, no other abnormalities were demonstrated. On the neurological exam, Dr. DeLornenzo indicated "sensation: normal to touch and pinprick; vibration and propriception senses intact."

¶ 13 On July 23, 2009, at Testa's request, the claimant was again examined by Dr. Cohen. Dr. Cohen reviewed the claimant's history, noting that his April 2009, EMG study showed "widespread peripheral neuropathy," which he stated was consistent with the claimant's history

of diabetes, and a question of "some overriding carpal tunnel syndrome" as well. Dr. Cohen recommended that the claimant have a cortisone injection into the right wrist before proceeding with surgery. He stated that, if the injection provided temporary relief but the claimant's symptoms recurred, he recommended proceeding with the TFCC surgery.

¶ 14 On July 30, 2009, Dr. Heller stated that he reviewed Dr. Cohen's assessment of the claimant and injected him with cortisone. On August 6, the claimant returned to Dr. Heller and reported the injection provided minimal to no relief. Dr. Heller had additional x-rays of the claimant's wrist taken, which showed that the posttraumatic arthritis from his old fracture had worsened and that he had a displaced ulnar styloid. Dr. Heller recommended that the claimant proceed with the surgical TFCC repair.

¶ 15 On August 11, 2009, the claimant visited Dr. DeLorenzo, who released the claimant for surgery as his blood sugar levels had stabilized.

¶ 16 On August 13, 2009, Dr. Heller performed a right wrist arthroscopy with debridement and TFCC repair of the distal radioulnar joint. In his surgical report, Dr. Heller noted that he found extensive cartilage injury with posttraumatic arthritis in the radiocarpal joint, synovitis throughout the wrist joint, cartilage loss, ligament damage, and the TFCC tear. According to Dr. Heller, based upon the extensive cartilage injury, the claimant would likely require an additional procedure in the form of limited arthrodesis or proximal row carpectomy. After the surgery, the claimant resumed physical therapy.

¶ 17 On September 22, 2009, the claimant saw Dr. DeLorenzo, reporting continued right wrist pain, including aching, weakness of thumb adduction and abduction, and hand grip.

¶ 18 In a follow-up visit report on September 24, 2009, Dr. Heller stated that the claimant was healing well, but he would likely have "some degree of permanent stiffness, swelling and pain in the wrist."

¶ 19 On October 8, 2009, Dr. DeLorenzo recommended that the claimant obtain a second opinion because of his continued pain and limited function in the right wrist despite the surgical intervention.

¶ 20 On November 12, 2009, Dr. Heller released the claimant to light-duty work. In his report of that date, Dr. Heller stated that the claimant was improving, that x-rays continued to show the ulnar styloid non-union, and that he should continue with physical therapy. The claimant testified that he returned to light-duty work at Testa shortly after November 12.

¶ 21 On November 19, 2009, the claimant reported to Dr. DeLorenzo that he returned to work on a light-duty basis and that he had begun experiencing a severe cold sensation in his fingertips. However, the claimant's job duties required work in coolers, so Dr. DeLorenzo recommended that he use hand warmers and follow-up if the condition did not improve. He noted that he suspected that "the injury and surgeries ha[d] caused some sensitivity."

¶ 22 The claimant saw Dr. Heller again on December 10, 2009. Dr. Heller stated that the claimant had reached maximum medical improvement (MMI), because he did not think the claimant's range of motion or swelling would improve any further. He ordered a functional capacity evaluation (FCE) to determine if the claimant would need any permanent work restrictions. The December 15, 2009, FCE indicated that the claimant demonstrated functional capabilities at the light-medium physical demand level.

¶ 23 On December 17, 2009, after reviewing the claimant's FCE, Dr. Heller wrote that the claimant was functioning at the light-medium level whereas his job required the medium level. He, therefore, released the claimant to work only at a light-medium level based upon the FCE and noted that he could not rule out the need for further treatment of the right wrist if the posttraumatic arthritis worsened.

¶ 24 On March 25, 2010, the claimant followed-up with Dr. DeLorenzo, who believed he needed a second orthopedic opinion regarding his wrist condition. Dr. DeLorenzo referred him to Dr. John Fernandez, who the claimant saw on May 5, 2010. The claimant testified that Dr. Fernandez recommended a second surgical procedure to treat his right wrist condition. Dr. Fernandez stated that the claimant had a fairly significant injury with a fracture and malunion of the distal radius with a nonunion of the ulna styloid. The claimant reported that the first surgery provided some relief, but he continued to have significant pain and dysfunction, including pain, swelling, and worsening stiffness. In Dr. Fernandez's "neurologic" notes, he stated that the claimant reported "no significant subjective parasthesias or complaints of sensory loss." Dr. Fernandez recommended an ulnar shortening osteotomy to level out the joint with another debridement of the joint.

¶ 25 On May 27, 2010, the claimant was again examined by Dr. Cohen at the request of Testa. Dr. Cohen agreed with Dr. Fernandez that the claimant had not reached MMI and should proceed with an ulnar shortening osteotomy and joint debridement procedure.

¶ 26 On June 17, 2010, the claimant saw Dr. Fernandez, stating that he wanted to proceed with the recommended surgery. The claimant reported that his fingertips felt cold and that he experienced numbness and tingling along the thumb and index fingers, which worsened at night.

Upon examination, the claimant tested positive on the Tinel's test and median nerve compression test and experienced discomfort to direct palpation along the ulnar wrist and along the carpal tunnel. Dr. Fernandez noted that the claimant's 2009 EMG study showed bilateral superimposed median neuropathies. He continued to recommend ulnar shortening surgery.

¶ 27 On July 19, 2010, Dr. Fernandez performed right wrist arthroscopic surgery with partial distal ulna excision, distal ulna styloid nonunion resection, carpal tunnel release and debridement of the joint. During the operation, Dr. Fernandez found significant ulnocarpal impaction and destruction of the cartilage and ligament, all appearing posttraumatic in nature. He stated that he performed a wafer procedure because he felt that the claimant would likely require a fusion surgery in the future and, as a consequence, the ulnar shortening procedure was not his best option. After the surgery, the claimant underwent physical therapy.

¶ 28 At a September 1, 2010, follow-up appointment with Dr. Fernandez, the claimant reported numbness and tingling in his right hand, primarily affecting the middle finger and ring finger at the distal tips. The claimant tested positive on the Tinel's test. Dr. Fernandez diagnosed him with "probable early cubital tunnel syndrome." On November 3, the claimant reported to Dr. Fernandez that he continued to have numbness and tingling in his fingers with some improvement in the middle and index fingers. Dr. Fernandez diagnosed the claimant with "right elbow cubital tunnel syndrome."

¶ 29 On November 18, 2010, Dr. Fernandez released the claimant to light-duty work. On December 16, 2010, the claimant saw Dr. Fernandez because he continued to have pain and symptoms in his right wrist and right elbow. Dr. Fernandez stated that the claimant continued to have "neurologic complaints primarily affecting the ulnar nerve distribution," pain emanating

from the right elbow, and pain, swelling, tightness and weakness in his wrist. The claimant tested positive on the Tinel's test and demonstrated irritability in the ulnar nerve at the elbow. Dr. Fernandez stated that the claimant would likely require a partial or total fusion, but "at this point he [was] also having active symptoms relating to the cubital tunnel which [he] believed was related to all of this." Dr. Fernandez ordered an EMG study, which was performed on December 29, 2010, by Dr. Holmes.

¶ 30 In a December 29 EMG report, Dr. Holmes stated that the claimant had right ulnar neuropathy which had worsened since the April 2009 EMG. According to the report, "[t]his could be seen with a[n] ulnar neuropathy in the region of the Guyon canal, or could be seen secondary to progression of the more widespread peripheral neuropathy." Dr. Holmes noted that there was no electrical evidence of right ulnar neuropathy across the elbow. Additionally, there was evidence of "widespread sensory motor peripheral neuropathy with a mixture of axonal and demyelinating characteristics" and improved "right median neuropathy" which was consistent with "superimposed carpal tunnel syndrome" compared to the April 2009 study. Dr. Holmes stated that "[f]rom a clinical standpoint it should be noted that the [claimant's] symptoms sound most consistent with the right ulnar neuropathy."

¶ 31 On January 11, 2011, the claimant followed-up with Dr. Fernandez, who noted that the EMG study showed that the claimant had ulnar neuropathy at the right wrist but not at the elbow. The claimant reported that he continued to suffer from numbness and tingling in the ring and small fingers with pain along the medial elbow and pain and stiffness in the wrist. Dr. Fernandez recommended surgery to decompress the claimant's ulnar nerve at the elbow, release the cubital tunnel at the elbow, and release the ulnar nerve at the Guyon canal at the wrist.

¶ 32 On March 2, 2011, at the request of Testa, the claimant was examined by Dr. Cohen. Dr. Cohen agreed that the claimant had ulnar neuropathy involving his right hand superimposed on top of what appeared to be a peripheral neuropathy. However, Dr. Cohen opined that the claimant's "repairing symptoms and (*sic*) not related to the original work injury." He stated that the claimant's neuropathy did not appear until September 2010, about two years after the workplace accident, and he did not believe that the ulnar neuropathy was related to that accident. Dr. Cohen agreed with the recommended surgery to treat the claimant's symptoms, but he did not think the third surgery was related to the work injury. In an April 12, 2011, addendum to his report, Dr. Cohen stated that, regarding the work-related wrist injury, the claimant had reached MMI.

¶ 33 The claimant testified that he never received approval to have the third surgery recommended by Dr. Fernandez and that he was no longer working for Testa because, as of May 9, 2011, no light-duty work was available. The claimant denied ever having wrist or elbow symptoms before the October 2008 accident.

¶ 34 Following the hearing, the arbitrator found that the claimant was entitled to temporary total disability (TTD) benefits for the time period of October 3, 2008, through November 3, 2010, and from May 9, 2011, through May 23, 2011, pursuant to section 8(b) of the Workers' Compensation Act (Act) (820 ILCS 305/8(b) (West 2008)); and temporary partial disability (TPD) benefits from November 4, 2010, through May 8, 2011, pursuant to section 8(a) of the Act (820 ILCS 305/8(a) (West 2008)). The arbitrator further found that the claimant was entitled to benefits for prospective medical care.

¶ 35 Testa sought review before the Commission, arguing that the claimant failed to prove that his current condition of ill-being was causally connected to his work accident. On June 20, 2012, the Commission modified the arbitrator's award by vacating the award for TTD benefits from May 9, 2011, through May 23, 2011, and ending TPD benefits on April 12, 2011, instead of May 8, 2011. The Commission further vacated the arbitrator's finding that the claimant was entitled to benefits for prospective medical care for the right elbow and right wrist and remanded the cause to the arbitrator for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill.2d 327, 399 N.E.2d 1322 (1980). The Commission found, placing great weight on the opinions of Dr. Cohen, that the claimant failed to prove that his ulnar neuropathy was causally connected to his October 3, 2008, accident and that the claimant had reached MMI for his right wrist injury on April 12, 2011. The Commission specifically noted that there was no evidence that Dr. Fernandez was aware of the claimant's prior medical records before examining him and that there was no evidence of any symptoms of ulnar neuropathy until two years after the accident.

¶ 36 The claimant sought judicial review of the Commission's decision in the circuit court of Cook County. On March 5, 2013, the circuit court set aside the Commission's decision and reinstated the decision of the arbitrator. The circuit court explained that the Commission improperly "isolate[d] its credibility determination" when it relied solely upon Dr. Cohen's opinion that the claimant's ulnar neuropathy was not caused by the original workplace accident, given the opposing evidence in the record. The court stated that the Commission failed to make any credibility determinations regarding the claimant and his treating doctors. The court found, therefore, that the Commission's reliance on Dr. Cohen's opinion that, because the claimant's

ulnar neuropathy did not develop until two years after the wrist injury, his current condition was not caused by the workplace accident, was not supported by the record and was unreasonable. Testa now appeals.

¶ 37 In this appeal, Testa argues that the Commission correctly found that the claimant failed to prove a causal connection between the October 3, 2008, work accident and his current condition of ill-being because the medical evidence demonstrated that the claimant's current ulnar neuropathy did not develop until two years after the accident. Testa contends that the Commission correctly placed more weight on the opinions of Dr. Cohen because it found no indication that Dr. Fernandez was aware of the claimant's 2009 EMG study which showed bilateral neuropathy related to his diabetes before he opined on December 16 that the claimant had developed cubital tunnel syndrome from the wrist injury. The claimant counters that the Commission's decision was against the manifest weight of the evidence because the medical evidence clearly established that he had symptoms of carpal tunnel syndrome within six months of his injury and his symptoms worsened over time, leading to his current ulnar neuropathy condition. He further contends, contrary to Testa's argument, that the evidence showed that Dr. Fernandez was aware of his 2009 EMG results. We agree with the claimant.

¶ 38 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. *O'Dette v. Industrial Comm'n*, 79 Ill.2d 249, 253, 403 N.E.2d 221 (1980). Whether a causal relationship exists between a claimant's employment and his injury is a question of fact to be resolved by the Commission, and its resolution of such a matter will not be disturbed on appeal unless 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 (1984). In resolving such issues, it is the function of the Commission to decide questions of fact, judge the credibility of witnesses, and resolve conflicting medical evidence. *O'Dette*, 79 Ill.2d at 253. For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill.App.3d 288, 291, 591 N.E.2d 894 (1992). Whether a reviewing court might reach the same conclusion is not the test of whether the Commission's determination of a question of fact is supported by the manifest weight of the evidence. Rather, the appropriate test is whether there is sufficient evidence in the record to support the Commission's determination. *Benson v. Industrial Comm'n*, 91 Ill. 2d 445, 450, 440 N.E.2d 90 (1982). Although we are reluctant to set aside the Commission's decision on a factual question, we will not hesitate to do so when the clearly evident, plain, and indisputable weight of the evidence compels an opposite conclusion. *Montgomery Elevator Co. v. Industrial Comm'n*, 244 Ill. App. 3d 563, 567, 613 N.E.2d 822 (1993).

¶ 39 In this case, the Commission's finding that the claimant's right ulnar neuropathy was not causally connected to his workplace accident is against the manifest weight of the evidence. The Commission based its decision on Dr. Cohen's opinion that the claimant's right ulnar neuropathy developed two years after his workplace accident, noting the condition was first mentioned on September 1, 2010, by Dr. Fernandez. While Dr. Cohen was correct that the claimant was not diagnosed with right ulnar neuropathy until 2010, the claimant had reported neurological symptoms as early as April 2009, when his EMG report indicated that he was reporting a cold sensation and tingling in his right hand and fingers. That EMG revealed carpal tunnel syndrome and neuropathy potentially related to his injury. The claimant subsequently continued seeking

treatment for his symptoms without interruption, leading to the surgery to repair the TFCC tear which developed after his fractures had not healed properly and the second surgery to repair the ulna and release the carpal tunnel. The claimant's neurological symptoms persisted and both Dr. DeLorenzo and Dr. Fernandez stated that they believed these symptoms were related to his initial injury and subsequent surgeries. Contrary to Testa's argument and the Commission's decision, Dr. Fernandez mentioned the findings of the claimant's 2009 EMG study, indicating that he had in fact reviewed the claimant's prior medical records. Further, the claimant's December 2010 EMG noted that the right ulnar neuropathy had worsened since April 2009, indicating that the claimant had neuropathy in the right ulnar region in 2009 and it had thereafter worsened. Finally, the claimant denied, and there is no contradictory evidence, that he had any pain or neurological symptoms in his right wrist before the workplace accident and no record of any complaints pertaining to his left wrist. Other than Dr. Cohen's March 2011 opinion that the claimant was not diagnosed with the ulnar neuropathy for two years, the claimant's uncontroverted medical records demonstrated that his neurological symptoms developed shortly after his accident, worsened over time, and were related to his initial injury and subsequent surgeries. Based on this evidence, the Commission's finding, that the claimant's right ulnar neuropathy was not causally connected to his workplace accident of October 3, 2008, is against the manifest weight of the evidence.

¶ 40 We, therefore, affirm the circuit court judgment which set aside the Commission's decision and reinstated the arbitrator's award.

¶ 41 Affirmed.