2014 IL App (1st) 134033WC-U
No. 1-13-4033WC

Order filed December 26, 2010

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

DAWN BARAJAS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellant,	)	
	)	
v.	)	No. 13-L-50592
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION and CASH AMERICA	)	
INTERNATIONAL,	)	Honorable
	)	Edward S. Harmening,
Defendants-Appellees.	)	Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.

Presiding Justice Holdridge and Justices Hoffman, Harris, and Stewart concurred in the judgment.

ORDER

¶ 1 *Held*: The Commission's finding that claimant failed to establish a causal connection between her work accident of March 18, 2011, and her low-back condition is not against the manifest weight of the evidence.

¶ 2 Claimant, Dawn Barajas, appeals the judgment of the circuit court of Cook County confirming a decision of the Illinois Workers' Compensation Commission (Commission). The

Commission determined that claimant's low-back condition and her need for back surgery were not causally related to her work accident. We affirm and remand for further proceedings.

¶ 3 I. BACKGROUND

¶ 4 On July 6, 2011, claimant filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2010)) alleging injuries to her lower back and legs as a result of an accident on March 18, 2011, while in the employ of respondent, Cash America International. On September 7, 2012, the matter proceeded to an arbitration hearing pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2010)). The following relevant evidence was presented at that hearing.

¶ 5 Respondent provides short-term loans and financial services to the general public. Claimant began working for respondent as a collections agent in October 2008. On Friday, March 18, 2011, claimant was scheduled to work from 8 a.m. until 4:30 p.m. At approximately 2:30 p.m., claimant fell while walking to the bathroom. Regarding the circumstances surrounding the fall, claimant explained that the collections agents work in rows of cubicles on a raised platform. The stepdown from the platform to the area where the bathroom is located is approximately three inches. A metal railing divides the platform from the lower floor. Rather than walking around the railing to reach the lower level, claimant decided to take a shortcut by climbing over the railing. To this end, claimant approached the railing, put her right hand on the bar, swung her left leg over, and stepped down with her left foot. As claimant attempted to swing her right leg over the railing, she lost her footing, twisted, and fell. Claimant testified that she landed on her buttocks and her back struck a nearby wall. Claimant also related that she injured her left knee and that her right middle fingernail "got pulled back." Following the fall, claimant stood up and continued to the bathroom.

¶ 6 After claimant used the bathroom, she encountered Ashley Mackowiak, respondent's human resources manager. Mackowiak asked claimant to fill out an accident report. Claimant estimated that she completed the accident report approximately 15 minutes after the incident, indicating that her complaints related to her finger and left knee. Claimant explained that she did not reference her low back in the accident report because, although she was experiencing "[a]chiness" in that area, "[i]t wasn't the most intense pain [she] was having." Claimant denied having prior problems with her back or legs other than "the usual aches and pains of getting older."

¶ 7 The accident report was admitted into evidence. The report describes the accident as follows: "Misjudged railing and fell on left knee. Also, hurt right middle fingernail. Bent backwards." In response to a question in the report regarding what part of the body was injured, claimant wrote, "left knee, right middle fingernail." Further, a box was checked that medical treatment was offered and declined. The report is signed by claimant. Claimant admitted completing and signing the report, but denied checking the box that medical treatment was offered to her and she declined it. Claimant testified that after she completed the accident report, respondent sent her for a drug screen. Claimant left work and walked approximately one mile to the drug-testing facility. Claimant testified that she felt mild low-back pain, similar to a muscle pull, during the walk.

¶ 8 Over the weekend, claimant's back felt sore, and she rested at home. The following Monday morning, claimant reported for work and spoke with Nancy Gabriel, a coworker. Claimant told Gabriel that her back hurt, and Gabriel suggested that claimant see a chiropractor. During the ensuing week, claimant felt back pain, but continued to work. The symptoms in claimant's knee and finger resolved after some time without any treatment. However as time

progressed, claimant's back pain worsened. It became sharper and lasted longer. Two or three weeks after the accident, the pain began to radiate to the buttocks. In an effort to stay comfortable at work, claimant alternated between sitting and standing.

¶ 9 Claimant testified that on May 18, 2011, she woke up in severe pain. The pain was a tingling, sharp low-back pain, radiating to the buttocks and upper legs. Claimant went to work and spoke to Michael Guenther, a supervisor, about seeing a doctor. Claimant told Guenther about her symptoms and explained that they stemmed from the work accident. Guenther told claimant that he needed some time to look into it. At around 1:30 p.m., Guenther told claimant she could go to any Concentra clinic.

¶ 10 Claimant presented to the Concentra clinic at Archer and Ashland in Chicago. The medical records of that visit show that claimant saw Dr. Melissa Rendlen on May 18, 2011. Dr. Rendlen recorded the following history: "The patient states that two months ago she tripped over a railing falling to her side and backwards. She denies pain at that time, and in fact had no pain for another month. For the past month she has had intermittent pain which can be stabbing, is worse with long term sitting or standing. She denies a previous history of problems." On physical examination, straight-leg raising was positive on the right. Dr. Rendlen diagnosed a lumbar strain, prescribed pain medication and a muscle relaxant, kept claimant on full duty, and advised claimant to see her primary-care physician "regarding a non-work related condition." Claimant was questioned about the medical records from Concentra. Claimant maintained that she gave a history consistent with her testimony and disagreed that she told Dr. Rendlen that she did not have any back pain for a month after the accident.

¶ 11 Claimant further testified that after Concentra, she sought treatment with Dr. Miroslaw Piotrowski, her primary-care physician. The medical records from Dr. Piotrowski show that on

June 11, 2011, claimant presented with complaints of intermittent low-back pain "that started around March 18, 2011 *** [and] slowly builded [*sic*] up after a fall at work." Claimant's physical examination was unremarkable. Dr. Piotrowski ordered an MRI, but the test was denied as medically unnecessary. Dr. Piotrowski's records include a report from Dr. Linda Mileti, a rheumatologist. Claimant saw Dr. Mileti on May 18, 2010, with "a seven year history of pain in the hips, low back, shoulders, hands, and feet." Dr. Mileti diagnosed fibromyalgia. At that time, Dr. Mileti prescribed physical therapy and recommended aerobic exercise and stretching.

¶ 12 On July 5, 2011, claimant followed up with Dr. Piotrowski and complained that her back pain was much worse, with radiation down the left buttock and left leg. Dr. Piotrowski recommended a consultation with an orthopaedic surgeon. On July 13, 2011, in accordance with Dr. Piotrowski's referral, claimant saw Kelly Richter, a physician's assistant to Dr. Michael Zindrick of Hinsdale Orthopaedics. At that time, claimant complained of low-back pain radiating to the left leg and gave a history consistent with her testimony. Claimant denied any history of prior back problems. Physical examination was notable for a restricted range of motion, but otherwise normal. Richter's impression was (1) low-back pain with radiculopathy secondary to a work-related injury and (2) left knee pain and cervical myofascial pain likely unrelated to her work injury. Richter recommended physical therapy and kept claimant on full duty. On August 24, 2011, claimant saw Dr. Zindrick. At that time, claimant reported no change in her symptoms, and Dr. Zindrick ordered an MRI. The MRI was taken on August 27, 2011, and showed: (1) disc bulges and facet hypertrophy at L1-L2 through L3-L4; (2) grade I anterolisthesis, a disc bulge, and severe degenerative facet hypertrophy with moderate to severe central stenosis and moderate left-sided neural foraminal narrowing at L4-L5; and (3) a left

paracentral disc protrusion/annular tear with severe right and moderate left degenerative facet hypertrophy and moderate central stenosis at L5-S1.

¶ 13 On September 27, 2011, Richter referred claimant to Dr. Steven Bardfield for epidural steroid injections. Dr. Bardfield administered a series of three injections beginning on October 27, 2011. Meanwhile, on November 10, 2011, Richter took claimant off work after claimant called to complain of severe low-back pain. On November 14, 2011, Richter saw claimant and kept her off work. On December 8, 2011, claimant followed up with Dr. Zindrick and reported no improvement with the injections. As a result, Dr. Zindrick recommended a laminectomy and fusion at L4-L5, opining that the work accident permanently aggravated claimant's preexisting degenerative condition. Thereafter, claimant periodically followed up with Dr. Zindrick, who continued to recommend surgery and kept claimant off work. Claimant testified that she would like to proceed with the surgery recommended by Dr. Zindrick.

¶ 14 Dr. Zindrick testified by evidence deposition on May 21, 2012. Based on the history provided by claimant, it was Dr. Zindrick's understanding that claimant immediately developed back pain after the work accident and that the pain gradually increased. Dr. Zindrick stated that the mechanism of injury was twisting and landing on the back. Dr. Zindrick opined that claimant's low-back condition was causally connected to the work accident, explaining that he based his opinion "on the history of a trauma that was of a competent cause of an aggravation or an injury to the back[] and a history of progressive symptoms that were medically consistent with her complaints." More specifically, Dr. Zindrick opined that the work accident aggravated preexisting degenerative disc disease at L4-L5 and caused some abnormalities at L5-S1, including the disc herniation. On cross-examination, Dr. Zindrick testified that claimant's spondylolisthesis appeared degenerative and not traumatically induced. Dr. Zindrick conceded

that the MRI did not show any specific traumatic findings with respect to the L5-S1 disc. Dr. Zindrick also admitted his causation opinion might change if claimant did not have back pain immediately after the fall or during the next several weeks. The clinical note from Dr. Rendlen did not change his opinion because the history in the note was "an out liar [*sic*]," in that it was different from the consistent histories in all other medical records. Nevertheless, Dr. Zindrick testified that if Dr. Rendlen's history were the only information available, it would change his opinion.

¶ 15 On February 15, 2012, Dr. Edward Goldberg, a spine surgeon, examined claimant at respondent's request pursuant to section 12 of the Act (820 ILCS 305/12 (West 2010)). Dr. Goldberg testified by evidence deposition on August 31, 2012, that claimant complained of escalating low back pain and gave a history consistent with her testimony. Dr. Goldberg examined claimant, reviewed the medical records, and agreed with Dr. Zindrick's plan of care. Regarding causal connection, Dr. Goldberg noted the discrepancy between the history recorded by Dr. Rendlen and the histories recorded by other providers. Dr. Goldberg testified that his opinion on causal connection would depend on which history is accurate. Dr. Goldberg explained that the fall on March 18, 2011, could have aggravated claimant's degenerative condition or the degenerative condition could have naturally progressed to its current state.

¶ 16 Nancy Gabriel, claimant's former coworker, testified that she worked for respondent from April 2010 through March 25, 2011, as a "section manager." Gabriel was not claimant's direct supervisor. Gabriel's cubicle was one row behind claimant's cubicle. Gabriel saw claimant every day and did not notice any pain behaviors prior to March 18, 2011. Gabriel did not witness the accident, but responded after she heard the commotion. She observed claimant sitting on the floor. At that time, claimant explained that she had hurt her knee. Gabriel further

testified that the Monday after the accident, claimant complained of pain in her knee and low back. Gabriel noted that claimant was sitting awkwardly on her right buttock and leaning to the side. For the next several days, claimant told Gabriel that her back hurt, and Gabriel could tell something was wrong from the way claimant moved and shifted in her seat.

¶ 17 LaToya Laurent testified that she was hired by respondent in February 2010. At some point during her employment, she occupied a cubicle next to claimant. According to Laurent, prior to the work accident, claimant did not mention any problems with her back or legs. On March 18, 2011, Laurent responded to a loud noise and saw claimant on one knee and twisted a little to the side. A few days after the accident, Laurent spoke to claimant. Claimant stated she had a little pain in her back, but was going to work through it because she needed the job. On multiple occasions, Laurent noticed that claimant walked and sat down slowly and appeared to be in pain. On several occasions, claimant asked Laurent for pain medication.

¶ 18 Ashley Mackowiak, respondent's human resources manager, testified that on March 18, 2011, she heard a loud noise and saw claimant on the floor. Claimant was on her buttocks, near a railing. Approximately 10 minutes after the accident, Mackowiak asked claimant to complete an accident report. Claimant was reluctant to do so, stating that she was fine, just embarrassed. Mackowiak offered to send claimant to Concentra for medical treatment, but claimant declined. Claimant eventually completed an accident report and checked the box that she was declining medical treatment. Mackowiak then sent claimant for a mandatory drug screen. Mackowiak further testified that she usually saw claimant every day in passing. After the accident, Mackowiak was not aware that claimant had any complaints until May 18, 2011.

¶ 19 Based on the foregoing evidence, the arbitrator determined that claimant's current condition of ill-being was causally related to the work accident. The arbitrator credited the

causation opinion of Dr. Zindrick and gave little weight to the history contained in the clinical note from Dr. Rendlen. The arbitrator reasoned that claimant initially perceived her back injury as minor and declined medical treatment. However, claimant's back symptoms gradually worsened as corroborated by claimant's coworkers. The arbitrator awarded claimant medical expenses, future medical care (the surgery recommended by Dr. Zindrick), and 42-5/7 weeks of temporary total disability (TTD) benefits.

¶ 20 The Commission reversed the arbitrator's decision, finding that claimant failed to establish a causal connection between her low-back condition and the work accident. In support of its decision, the Commission emphasized the discrepancies between claimant's testimony at the arbitration hearing and the histories she provided to medical professionals. The Commission noted that although claimant testified to the immediate onset of low-back pain, this history is not reflected in the contemporaneous accident report. The Commission also pointed out that despite claims of gradually increasing low-back pain, claimant waited two months to seek medical care. Further, when claimant did seek medical intervention, she reported that she did not experience any back pain until a month after the accident. In addition, the Commission pointed out that, contrary to claimant's testimony that she did not have any low-back symptoms preceding the work accident, the medical records showed otherwise. The Commission acknowledged Dr. Zindrick's causation opinion, but noted that he relied upon a history that claimant suffered immediate pain in her back which is contrary to the records of Dr. Rendlen, the most contemporaneous medical provider. As a result, the Commission allowed reasonable and necessary medical expenses relative only to the injuries to claimant's left knee and her right middle finger. In addition, the Commission remanded the matter for further proceedings pursuant to *Thomas v. Industrial Comm'n*, 78 Ill. 2d 327 (1980). Upon judicial review, the

circuit court of Cook County confirmed the decision of the Commission. This timely appeal followed.

¶ 21 II. ANALYSIS

¶ 22 On appeal, claimant asserts that the Commission's finding that her low-back condition of ill-being is not causally connected to her work accident of March 18, 2011, is against the manifest weight of the evidence. According to claimant, there is an abundance of evidence to establish that she experienced low-back pain immediately after the work accident. Thus, she asserts, it was improper for the Commission to primarily rely on the records of Dr. Rendlen and conclude that she experienced no back pain in the month that followed the work accident.

¶ 23 Prior to addressing the merits of claimant's argument, we direct her to Illinois Supreme Court Rule 341(h)(6) (eff. Feb. 6, 2013). That rule requires the appellant to include in his or her brief a "Statement of Facts" outlining the pertinent facts "stated accurately and fairly without argument or comment, and with appropriate reference to the pages of the record on appeal." Ill. S. Ct. R. 341(h)(6) (eff. Feb. 6, 2013). In this case, claimant's statement of facts is argumentative and provides unnecessary commentary.[1] Moreover, claimant fails to provide citation to the record for numerous factual assertions. The rules of our supreme court are mandatory rules of procedure, not mere suggestions. *Menard v. Illinois Workers' Compensation Comm'n*, 405 Ill. App. 3d 235, 238 (2010). They have the force of law, and all parties must comply with them. *Szczesniak v. CJC Auto Parts, Inc.*, 2014 IL App (2d) 130636, ¶ 8. Where a

[1] For instance, claimant asserts in her "statement of facts" that the medical records from Concentra "are not one hundred percent accurate," respondent "had no doctor opinion on causation," and the Commission "incorrectly" referenced Dr. Mileti's records.

brief fails to comply with Rule 341(h)(6), we may strike the statement of facts or dismiss the appeal. *Szczesniak*, 2014 IL App (2d) 130636, ¶ 8. In this case, we will not invoke either of these remedies as the cited violations to do not seriously hinder our review. Nevertheless, we will disregard the noncompliant portions of claimant's statement of facts. *Szczesniak*, 2014 IL App (2d) 130636, ¶ 8. In addition, we admonish claimant's attorney to follow the requirements of the supreme court rules in future submissions.

¶ 24 Turning to the merits, the principles governing our review of the Commission's decision are well settled. An employee seeking workers' compensation benefits has the burden of proving all elements of her claim. *Beattie v. Industrial Comm'n*, 276 Ill. App. 3d 446, 449 (1995). Among other things, the employee must establish a causal connection between the employment and the injury for which she seeks benefits. *Boyd Electric v. Dee*, 356 Ill. App. 3d 851, 860 (2005). Causation presents an issue of fact. *Bernardoni v. Industrial Comm'n*, 362 Ill. App. 3d 582, 597 (2005); *Caterpillar, Inc. v. Industrial Comm'n*, 228 Ill. App. 3d 288, 293 (1992). In resolving factual matters, it is within the province of the Commission to assess the credibility of the witnesses, resolve conflicts in the evidence, assign weight to be accorded the evidence, and draw reasonable inferences from the evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397 Ill. App. 3d 665, 674 (2009). A reviewing court may not reweigh the evidence, or reject reasonable inferences drawn from it by the Commission, merely because other reasonable inferences from the evidence may be drawn. *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006). We review the Commission's factual determinations under the manifest-weight-of-the-evidence standard. *Orsini v. Industrial Comm'n*, 117 Ill. 2d 38, 44 (1987). A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Mlynarczyk v. Illinois Workers' Compensation Comm'n*, 2013 IL App (3d)

120411WC, ¶ 17. Stated another way, if there is sufficient factual evidence in the record to support the Commission's decision, we must uphold it, regardless of whether this court, or any other tribunal, might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002).

¶ 25 In this case, the Commission was presented with conflicting histories regarding the onset of claimant's low-back complaints. There was evidence that claimant developed low-back symptoms immediately after the work accident. However, there was also evidence that claimant's low-back symptoms did not begin until at least one month after the work accident. The timing of claimant's low-back complaints is critical as both Drs. Goldberg and Zindrick agreed that the relationship between claimant's low-back condition and her work injury of March 18, 2011, depended upon which history was accurate. If claimant experienced the onset of low-back pain immediately after the fall, then there was a causal connection. If claimant's low-back symptoms did not arise until a month or more after the accident, then there was no causal connection. The Commission found more credible the history that claimant did not develop low-back symptoms until a month or more after the work accident. As such, the Commission determined that claimant failed to sustain her burden of proving that her low-back condition was related to the work accident. There is sufficient evidence in the record to support the Commission's decision.

¶ 26 Significantly, the report claimant completed shortly after the accident does not indicate the onset of low-back pain at the time of the accident. Moreover, despite allegations of gradually increasing low-back pain, claimant waited two months to seek any medical intervention. Further, the most contemporaneous medical records, those of Dr. Rendlen, reflect that claimant

did not experience any low-back pain until at least a month after the accident. Based on this history, Dr. Rendlen diagnosed claimant with a "non-work related" lumbar strain.

¶ 27 Claimant suggests that there is substantial evidence in the record to support a finding that the onset of her low-back pain began immediately after the accident and progressively worsened. Claimant cites to her testimony along with that of her coworkers and the records of Dr. Piotrowski, Dr. Zindrick, and Dr. Goldberg. We do not disagree that there is evidence of record to support a finding that claimant experienced the immediate onset of back pain. However, as noted above, our role as a reviewing court is not to reweigh the evidence. See *Durand*, 224 Ill. 2d at 64. It is the Commission's function to assess the evidence. *Hosteny*, 397 Ill. App. 3d at 674. Quite simply, given the absence of a low-back complaint in the contemporaneous accident report coupled with the inconsistencies in the medical records regarding the onset of low-back pain, the Commission could have reasonably determined that the evidence cited by claimant was insufficient to support a finding of causation between her low-back condition and the work accident. Further, based on the Commission's factual finding, and in light of the opinion testimony of Drs. Goldberg, Rendlen, and Zindrick, the Commission could have reasonably concluded that claimant's low-back condition was not causally related to her work accident. Because there was sufficient factual evidence in the record to support a finding that claimant did not experience the onset of low-back pain until one month after the work accident, we cannot say that a conclusion opposite to the one reached by the Commission is clearly apparent. As such, the Commission's decision that claimant failed to sustain her burden of proving a causal connection between her low-back condition and her work accident is not against the manifest weight of the evidence.

¶ 28 III. CONCLUSION

¶ 29 For the reasons set forth above, we affirm the judgment of the circuit court of Cook County, which confirmed the decision of the Commission. Further, we remand this cause to the Commission for further proceedings pursuant to *Thomas*, 78 Ill. 2d 327.

¶ 30 Affirmed and remanded.