

2015 IL App (1st) 142747WC-U

NO. 1-14-2747WC

Order filed: October 9, 2015

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT
WORKERS' COMPENSATION COMMISSION DIVISION

DEMETRIUS TRIPLETT,)	Appeal from the
)	Circuit Court of
Appellee,)	Cook County.
)	
v.)	No. 14-L-050036
)	
THE ILLINOIS WORKERS')	Honorable
COMPENSATION COMMISSION, <i>et al.</i>)	Edward Harmening,
(R.A. Shavitz, Inc., Appellant).)	Judge, presiding.

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

ORDER

Held: The Commission's initial decision on remand was vacated, the circuit court's order confirming the Commission's initial decision on remand was reversed, all subsequent decisions of the Commission and the circuit court were vacated, and the cause was remanded to the Commission with directions to comply with the circuit court's initial remand order where the Commission misunderstood, and therefore failed to comply with, the circuit court's initial remand order.

¶ 1 The claimant, Demetrius Triplett, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq.* (West 2006)), seeking benefits for injuries he allegedly sustained on September 5, 2008, while working for the employer, R.A. Shavitz, Inc. On May 22 and June 22, 2009, the claim proceeded to an expedited arbitration hearing under section 19(b) of the Act (820 ILCS 305/19(b) (West 2006)). In his September 17, 2009, decision, the arbitrator denied the claimant's claim, finding that his current condition of ill-being was not causally related to his September 5, 2008, work injury and that all other issues were, thus, moot.

¶ 2 The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (Commission). On April 14, 2010, a majority of the Commission corrected a scrivener's error in the arbitrator's decision but otherwise affirmed and adopted it.

¶ 3 The claimant filed a timely petition for judicial review in the circuit court of Cook County. On December 1, 2010, the circuit court remanded the matter to the Commission for further proceedings, finding that the claimant was improperly impeached regarding a prior workers' compensation claim and back injury and that the Commission's credibility determination was in error.

¶ 4 On November 21, 2011, the Commission issued its decision on remand, reversing its prior decision; finding that the claimant's current condition of ill-being was causally related to his September 5, 2008, work injury; and awarding him total temporary disability benefits and medical expenses. However, the Commission denied his request

for prospective medical care, stating that he did not identify prospective medical care as an issue at trial or on the request for hearing form.

¶ 5 Both parties filed timely petitions for judicial review. On May 15, 2012, the circuit court confirmed the Commission's decision with regard to causation, temporary total disability benefits, accident, and medical expenses but remanded the matter to the Commission for a determination as to prospective medical care because the issue was properly before the Commission.

¶ 6 On December 5, 2013, the Commission issued a decision on remand, awarding the claimant prospective medical care. The employer filed a timely petition for judicial review. The circuit court confirmed the Commission's decision on July 31, 2014.

¶ 7 The employer appeals, arguing that the Commission's initial decision on remand is void for lack of jurisdiction because it exceeds the scope of the Commission's authority and fails to follow the circuit court's initial remand order. The employer asks that the matter be remanded to the Commission to comply with the court's initial remand order. Alternatively, the employer argues that the Commission's decisions on remand are against the manifest weight of the evidence and, therefore, should be reversed. Because the Commission misunderstood, and, therefore, failed to comply with, the court's initial remand order, we vacate the Commission's initial decision on remand; reverse the circuit court's order confirming in part the Commission's initial decision on remand; vacate all subsequent decisions of the Commission and the circuit court; and remand to the Commission with directions to comply with the court's initial remand order.

¶ 8

BACKGROUND

¶ 9 On October 27, 2008, the claimant filed an application for adjustment of claim under the Act seeking benefits for injuries he allegedly sustained on September 5, 2008, while working for the employer. On May 22 and June 22, 2009, the claim proceeded to an expedited arbitration hearing under section 19(b) of the Act. The evidence presented at the arbitration hearing can be summarized as follows.

¶ 10 The claimant testified that he was performing roofing work for the employer on Friday, September 5, 2008. While hoisting a "roll of tar," which weighed approximately 75 pounds, from the ground to the roof, he felt a strain in his back. He kept working because they needed to finish the job and only one other worker was there. He stated that he was in bed all weekend because of back pain and denied any prior back injury.

¶ 11 On Monday, September 8, 2008, the claimant returned to work and reported his injury to his supervisor, who sent him to Wrigleyville Chiropractic & Massage, Ltd., for treatment. He saw Dr. Andrea Butt, a chiropractor, complaining of sharp low back pain radiating down his left thigh with tingling radiating into his left foot. He was diagnosed with lumbago, myalgia, myositis, sciatica, and thoracic spine pain and treated with ice packs. During follow-up visits on September 9, 10, and 12, 2008, he was treated with ice packs, chiropractic manipulation, electrical stimulation, and therapeutic exercise.

¶ 12 On October 2, 2008, the claimant underwent a magnetic resonance imaging (MRI) scan of the lumbar spine. The MRI scan showed mild disc degeneration at L4-L5 and L5-S1, a minimal disc bulge at L5-S1, and a mild bulge with a small central protrusion at L4-L5 with a mild narrowing of the central spinal canal.

¶ 13 The claimant was referred to Dr. Daniel Newman at Midwest Orthopedics Illinois Bone & Joint Institute (Midwest Orthopedics). He saw Dr. Newman on October 21, 2008, complaining of low back pain radiating into his left buttock and down to his left calf. He reported his September 2008 work injury and denied any prior low back injury. Dr. Newman diagnosed him with a herniated disk with left-sided sciatica and opined that his condition was causally related to his September 2008 work injury, that he was unable to return to his regular work duties at that time, and that he should be evaluated and treated for pain management.

¶ 14 Dr. Newman referred the claimant to Dr. Rizwan Arayan at Health Benefits Pain Management Services. He saw Dr. Arayan on October 23, 2008, complaining of low back pain radiating into his left lower extremity. He reported his September 2008 work injury and denied any prior low back injury. Dr. Arayan diagnosed him with lumbar disc degeneration, bulging discs at L4-L5 and L5-S1, and radiculitis. Dr. Arayan recommended medication, lumbar epidural steroid injections, and physical therapy and instructed him to remain off work.

¶ 15 On October 31, 2008, the claimant saw Dr. Anthony Rivera at Health Benefits Pain Management Services, who diagnosed him with lumbar radiculopathy, lumbar disc degeneration, lumbar disc bulges, and lumbar spinal stenosis. Dr. Rivera performed transforaminal epidural steroid injections on October 31 and November 14, 2008.

¶ 16 The claimant saw Dr. Arayan again on November 20, 2008. Dr. Arayan ordered an electromyogram (EMG) and nerve conduction study of the lower extremities. The December 4, 2008, EMG showed left L4-L5 and L5-S1 radiculopathy.

¶ 17 On December 22, 2008, at the employer's request, the claimant underwent an independent medical examination by Dr. Kern Singh, a spine surgeon. The claimant testified that he answered Dr. Singh's questions truthfully and honestly. Dr. Singh diagnosed him with degenerative disc disease at L5-S1 and a lumbar muscular strain. Dr. Singh noted that the MRI scan showed minimal evidence of central or foraminal stenosis, minimal loss of disc height, and minimal signal intensity change. Dr. Singh thought that the EMG was a false positive and that it did not correlate with the claimant's symptoms. Dr. Singh also noted that the claimant's subjective complaints did not correlate with the objective findings and that he exhibited symptom exaggeration and positive Waddell signs. Dr. Singh opined that his current condition of ill-being was not causally related to his workplace injury, that he was at maximum medical improvement, that he needed no additional treatment, and that he was capable of full-duty work without restrictions.

¶ 18 On January 13, 2009, the claimant saw Dr. David Rosania, who took over for Dr. Arayan, who left Health Benefits Pain Management Services. Dr. Rosania recommended a third injection, which he performed on January 22, 2009.

¶ 19 The claimant returned to Dr. Rosania on February 3, 2009, complaining of low back pain radiating down his left leg. Dr. Rosania advised him to continue his prescribed pain medication, Lidocaine patch, and portable interferential spine stimulator and to undergo physical therapy. He began physical therapy on February 9, 2009.

¶ 20 The claimant was referred to Dr. Theodore Fisher, a spine surgeon at Midwest Orthopedics. He saw Dr. Fisher on February 11, 2009. Dr. Fisher reviewed his EMG and nerve conduction studies, noting that they showed left L4-L5 and L5-S1

radiculopathy. He saw Dr. Fisher again on March 27, 2009, and was diagnosed with L4-L5 broad based disc bulge and bilateral foraminal stenosis, L5-S1 degenerative disc disease with bilateral foraminal stenosis, and left L4-L5 and L5-S1 radiculopathy. Dr. Fisher recommended a laminotomy and foraminotomy at L4-L5 and L5-S1.

¶ 21 The claimant testified that none of his treatment had helped alleviate his back pain, which he rated 8 on a scale of 0 to 10. He stated that, during his testimony, he was wearing a spine stimulator, which he wore any time he was outside his house. He denied any back pain before his September 5, 2008, work accident and testified that he had pain every day since then. He stated that he wanted to have the surgery Dr. Fisher recommended and that he would schedule it immediately if it was awarded to him.

¶ 22 On cross-examination, he again denied any back injuries or back pain before September 5, 2008. When asked if he had filed a prior workers' compensation claim, he responded, "I don't think so" and "[n]ot to my knowledge I haven't." The employer's counsel did not follow up with any other questions.

¶ 23 The employer did introduce a computer printout that shows that the claimant filed a workers' compensation claim against Phoenix Charter Transport, Inc., on August 28, 2002, alleging that he injured his low back in a July 18, 2002, motor vehicle accident. That claim was subsequently dismissed. The employer also noted that, on his application for adjustment of claim in this case, the claimant did not list any prior application for workers' compensation benefits even though the application requests such information.

¶ 24 In his September 17, 2009, decision, the arbitrator denied the claimant's claim, finding that his current condition of ill-being was not causally related to his September 5,

2008, work injury. The arbitrator found that the claimant was "not credible based on his untruthful testimony." The arbitrator noted that the claimant denied any prior back injuries even though he "filed a workers' compensation case *** on August 28, 2002, alleging an accident date of July 18, 2002," *** in which he "alleged injury to the lower back." The arbitrator found that the claimant's testimony denying any prior back injuries or back pain was "directly contradicted by" the prior workers' compensation case, "which involved the lower back," the same body part at issue in this case. The arbitrator also noted that the claimant testified "that he never filed a workers' compensation case in the State of Illinois," which was "[o]bviously *** not the case" because he "did file an Illinois Workers' Compensation claim in August 2002." The arbitrator also noted that the claimant gave inconsistent histories to his treating physicians, denying any prior back injuries. The arbitrator found that, because the claimant was not truthful with his treating physicians, their opinions were based on erroneous information and were, thus, of no evidentiary weight. The arbitrator found Dr. Singh's opinions to be more credible because "he was not operating on incorrect information." Based on his finding of no causal connection between the claimant's current condition of ill-being and the September 5, 2008, work accident, the arbitrator found all other issues moot.

¶ 25 The claimant appealed the arbitrator's decision to the Commission. On April 14, 2010, a majority of the Commission corrected a scrivener's error in the arbitrator's decision but otherwise affirmed and adopted it.

¶ 26 The claimant filed a timely petition for judicial review. On December 1, 2010, the circuit court entered an order, finding that the claimant was improperly impeached

regarding his prior workers' compensation claim and back injury and that "[t]he Commission's credibility determination was in error." The court noted that the claimant denied a prior back injury on both direct and cross-examination, but the employer did not ask any further questions regarding the prior back injury and its connection with his current condition of ill-being; nor did the employer confront him with the Commission's record to explain the apparent inconsistency. The court retained jurisdiction of the matter but remanded "for such proceedings before the Commission as it deems are appropriate under the Act." In doing so, the court stated: "If on remand, the Commission confirms its findings on the conflicting medical evidence, this Court will confirm the Commission's decision which denies benefits to [the claimant]."

¶ 27 On November 21, 2011, the Commission issued its decision on remand. In its decision, the Commission stated that on December 1, 2010, the circuit court entered its decision "reversing" the Commission's decision and remanding the case to the Commission "with directions to enter an award for [the claimant] in accordance with its Order." Later in its decision, the Commission stated that, on remand, it "ha[d] been instructed to revisit the issue of causal connection." "After carefully reviewing the evidence," the Commission found a causal connection between the claimant's current condition of ill-being and his September 5, 2008, work accident under a chain of events analysis. Based upon Dr. Fisher's opinion that the claimant needs surgery, the Commission found that he had not yet reached maximum medical improvement. The Commission awarded him temporary total disability benefits and past medical expenses

but denied his request for prospective medical care, stating that he did not identify prospective medical care as an issue at the time of trial or on the request for hearing form.

¶ 28 Both parties filed timely petitions for judicial review. On May 15, 2012, the circuit court confirmed the Commission's decision as to causation, temporary total disability benefits, accident, and medical expenses but remanded the case to the Commission for a decision regarding prospective medical care because the issue was properly before the Commission. In its order, the court stated that its initial "remand order did not instruct the Commission to enter an award for [the claimant] but that [the Commission's] analysis and award [were] correct."

¶ 29 On December 5, 2013, the Commission issued its decision on remand, awarding the claimant the prospective medical care recommended by Drs. Fisher and Rosania. The Commission found that the recommended prospective medical care is reasonable and necessary. The Commission found the opinions of Drs. Fisher and Rosania regarding prospective medical care more persuasive than the opinion of Dr. Singh.

¶ 30 The employer filed a timely petition for judicial review. The circuit court confirmed the Commission's decision on July 31, 2014. This appeal followed.

¶ 31 ANALYSIS

¶ 32 When, as in this case, a final order is entered confirming the Commission's decision on remand and an appeal is taken therefrom, we have jurisdiction to review the entire record and determine the propriety of the circuit court's initial remand order.

Stockton v. Industrial Comm'n, 69 Ill. 2d 120, 125-26, 370 N.E.2d 548, 550 (1977);

Williams Awning Co. v. Illinois Workers' Compensation Comm'n, 2011 IL App (1st)

102810WC, ¶ 9, 963 N.E.2d 339. However, in this case, the employer does not challenge the propriety of the circuit court's initial order finding the impeachment of the claimant improper and remanding the matter to the Commission, and the issue is, therefore, waived (see Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013) ("[p]oints not argued are waived")).

¶ 33 Because the issue is dispositive, we begin by addressing the employer's argument that the Commission's initial decision on remand is void for lack of jurisdiction because the Commission failed to follow the circuit court's remand instructions. It is well recognized that a reviewing court's mandate vests a lower court, or, in this case, the Commission, with jurisdiction only to take action that complies with the reviewing court's mandate. *Fleming v. Moswin*, 2012 IL App (1st) 103475-B, ¶ 28, 976 N.E.2d 447. On remand, the Commission lacks the authority to exceed the scope of the mandate and must follow the court's precise and unambiguous directions. *Id.* If specific directions are not given, the Commission should examine the court's order and determine what further proceedings would be consistent with that order. *Id.* Any other decision issued by the Commission is outside the scope of its authority and void for a lack of jurisdiction. *Id.*

¶ 34 Whether the Commission followed the reviewing court's remand order is a question of law, which is reviewed *de novo*. *Clemons v. Mechanical Devices Co.*, 202 Ill. 2d 344, 351-52, 781 N.E.2d 1072, 1078 (2002).

¶ 35 The employer argues that the Commission disregarded the circuit court's remand instructions, noting that, in its decision on remand, the Commission incorrectly stated that the circuit court entered its decision "reversing" the Commission's decision and remanding the case to the Commission "with directions to enter an award for [the

claimant] in accordance with its Order." We do not believe that the Commission "disregarded" the circuit court's remand instructions, but it is readily apparent that the Commission misunderstood them.

¶ 36 In its initial remand order, the circuit court found that the claimant was improperly impeached regarding his prior workers' compensation claim and back injury and that "[t]he Commission's credibility determination was in error." The court retained jurisdiction but remanded "for such proceedings before the Commission as it deems are appropriate under the Act." In doing so, the court stated:

"If on remand, the Commission confirms its findings on the conflicting medical evidence, this Court will confirm the Commission's decision which denies benefits to [the claimant]. [Citation.] 'The law is clear; it is the Commission's province to determine what weight to give testimony and to resolve conflicts in testimony. This includes medical testimony and evidence.' "

¶ 37 The Commission began its initial decision on remand by stating:

"[The claimant] appealed the Decision of [the arbitrator] in this §19(b) matter finding that [the claimant] did not sustain accidental injuries arising out of and in the course of his employment on September 5, 2008, and that [his] current condition of ill-being was not causally connected to the accident. The issues on Review were whether [the claimant] sustained accidental injuries arising out of and in the course of his employment on September 5, 2008, whether his current condition of ill-being was causally related to the accident, the extent of temporary total disability, and the amount of reasonable and necessary medical expenses

under §8(a) of the Act. In a Decision and Opinion on Review dated April 14, 2010, a majority of the Commission corrected, affirmed, and adopted the Arbitrator's Decision finding that [the claimant] failed to prove he sustained accidental injuries arising out of and in the course of his employment on September 5, 2008. *** On December 1, 2010, the Circuit Court of Cook County entered its Decision *reversing* the Commission's Decision and remanding the case to the Commission *with directions to enter an award for [the claimant] in accordance with its Order*. Based on the Circuit Court's Remand Order and, after considering the entire record, the Commission finds that [the claimant] sustained accidental injuries arising out of and in the course of his employment on September 5, 2008 ***." (Emphasis added.)

¶ 38 Based on the Commission's own words, as quoted above, it is readily apparent that the Commission erroneously believed the circuit court had reversed its decision in favor of the employer and remanded "the case to the Commission with directions to enter an award for [the claimant] in accordance with its Order." The Commission then did what it believed it had been ordered to do—it entered an award for the claimant.

¶ 39 In its order reviewing the Commission's initial decision on remand, the circuit court stated that its "remand order did not instruct the Commission to enter an award for [the claimant] but that [the Commission's] analysis and award [were] correct." The crucial fact that the circuit court failed to acknowledge is that the Commission may very well have found in favor of the claimant on remand only because it erroneously believed it was mandated to do so.

¶ 40 Because the Commission misunderstood, and, therefore, failed to comply with, the court's initial remand order, we vacate the Commission's initial decision on remand, in which the Commission reversed its original decision in favor of the employer; reverse the circuit court's order confirming in part the Commission's initial decision on remand; vacate all subsequent decisions of the Commission and the circuit court; and remand to the Commission with directions to comply with the circuit court's initial remand order by conducting "such proceedings before the Commission as it deems are appropriate under the Act" without considering the impeachment of the claimant based on his prior workers' compensation claim and back injury, which the circuit court found to be improper.

¶ 41 We want to be clear that we express no opinion as to what conclusions the Commission should reach on remand. "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.

¶ 42 Based on our resolution of this issue, we need not address the employer's alternative arguments on appeal.

¶ 43 CONCLUSION

¶ 44 For the foregoing reasons, the Commission's November 21, 2011, initial decision on remand, in which it reversed its original decision in favor of the employer, is vacated; the circuit court's May 15, 2012, order confirming in part the Commission's November 21, 2011, decision is reversed; the Commission's December 5, 2013, decision is vacated;

the circuit court's July 31, 2014, order is vacated; and the cause is remanded to the Commission with directions to comply with the circuit court's initial remand order.

¶ 45 Commission's November 21, 2011, decision vacated; circuit court's May 15, 2012, order reversed; Commission's December 5, 2013, decision vacated; circuit court's July 31, 2014, order vacated; and cause remanded to Commission with directions.