2017 IL App (1st) 163414WC-U
No. 1-16-3414WC
Order filed: September 29, 2017

IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

EDNA CHAMBERS,	)	Appeal from the Circuit Court
	)	of Cook County
Appellant,	)	
	)	
v.	)	No. 16-L-50292
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al.*,	)	Honorable
	)	James M. McGing,
(K-Five Construction Corp., Appellee).	)	Judge, Presiding
	)	

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

ORDER

¶ 1 *Held*: The decision of the Illinois Workers' Compensation Commission that claimant failed to prove causation was not contrary to the manifest weight of the evidence where—though conflicting evidence existed—there was expert medical testimony supporting that decision, claimant continued working full duty after her accident, and claimant did not seek medical treatment for her condition of ill-being until over four months after the accident alleged to have caused it; Commission's findings were sufficient such that claimant's request to remand cause to allow Commission to make additional findings was not well taken.

¶ 2 I. INTRODUCTION

¶ 3 Claimant, Edna Chambers, appeals an order of the circuit court of Cook County confirming a decision of the Illinois Workers' Compensation Commission (Commission) denying her benefits under the Illinois Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2010)). The Commission found that claimant failed to prove that her condition of ill-being was causally related to an at-work accident. For the reasons that follow, we affirm.

II. BACKGROUND

¶ 4 The following evidence was presented in the proceedings below. Claimant first testified that she was employed by respondent as a flagger-laborer. She began working for respondent—a road construction company—in July of 2000. Prior to September 16, 2010, claimant's knee was in "[p]erfect condition." She "was a 5-mile runner." On September 16, 2010, claimant was "standing in an intersection putting a grade all[1] and a truck through." Claimant stated that "asphalt came from the grade all" and hit her in the left leg. She fell to the pavement. The asphalt "hit [her] from the inside, and [her] whole knee hit the pavement." She later explained that the asphalt came from a "grinder," which is a "machine that brings all the asphalt off the street of the highway and it goes into a truck." A coworker, Sandy, took over for claimant, and claimant limped to the side of the street. Her whole leg started to swell and turned blue. She finished her shift. At the end of the day, she noted increased swelling. She continued to work after her accident until November or December. She showed her leg to Bob Pearson, "the superintendent" and, on a daily basis, to Sandy. She also showed it to her boss and to a person named Mark Banaszak, who she referred to as her "safety." As she worked through December,

[1]A "grade all" is a large piece of road-construction equipment used for removing asphalt from an existing road surface. Claimant later refers to it as a "grinder" as well.

she noted swelling and discoloration in her knee. She first sought medical attention in January 2011.

¶ 5 The first doctor claimant saw about her knee was Dr. Mitchell. Mitchell sent claimant for X rays, and, after another visit, she referred claimant to Dr. Mehl, who ordered an MRI. The MRI was performed in May 2011. Mehl performed surgery on claimant's left knee on May 31, 2011. After the surgery, Mehl administered Synvisc injections. Mehl imposed a work restriction of standing for no more than three hours. He also limited claimant to working no more than five hours per day.

¶ 6 Respondent's insurance company directed claimant to see Dr. Mark Levin, and she saw Dr. Chmell at the behest of her attorney. Since her operation, claimant has tried to find work, including at Carson's, J.C. Penney, a high school, and as a nursing assistant. As of the time of the arbitration hearing, claimant was still experiencing knee pain and having trouble sleeping. Typically, by the end of the day, claimant experiences "a lot of pain and numbness." She did not experience such things prior to the accident on September 16, 2010. She wears a spandex knee brace, which was prescribed by Mehl and a therapist. She gets a Synvisc shot every six months. Claimant also met with Lisa Helma, a vocational rehabilitation counselor.

¶ 7 On cross-examination, claimant stated that when she first saw her family physician, she described the size of the piece of asphalt that struck her. She also described it to Mehl. After the accident, she continued to work until the seasonal lay-off in December 2010. She did not continue running, however. Claimant indicated where the asphalt struck her, which the arbitrator stated was "no where [*sic*] near the shin." Claimant agreed that she may not have told Mehl, Levin, or Chmell the exact size of the asphalt and simply referred to it as "a chunk" when speaking with him. Claimant stated that she had worked with Sandy Hackney previously.

Hackney was working with claimant at the time of the accident. Claimant acknowledged that she did not miss any work from the date of the accident until she was laid off later that year; however, she explained that she was "working in pain." She did not seek medical attention until January 25, 2011. Claimant agreed that she was evaluated by Mett Therapy Services at St. James Health where she underwent "work conditioning." Helma—the vocational rehabilitation counselor—did not set up any interviews or otherwise perform job placement services. Hackney examined claimant's leg following the accident.

¶ 8 On redirect-examination, claimant explained that her leg was blue from just above her ankle to a few inches above her knee following the accident. Intitially, it went all the way around her leg. On recross-examination, claimant acknowledged having a "huge knot" on "[t]he front of [her] leg, [on] the bone below [her] knee."

¶ 9 Sandra Hackney testified via evidence deposition. She had worked for respondent since six or seven years before claimant's accident occurred. On September 16, 2010, she saw a large chunk of asphalt leave the grinder, hit the side of a dump truck, and then hit claimant in the left shin. Claimant "went down on her knee." Hackney asked claimant if she was okay, and claimant replied that she was not. At the end of the day, Hackney examined claimant's leg and observed a "huge knot in the middle of her shin." Claimant had been limping since the accident. Prior to the accident, "[s]he was walking good." [*Sic*.]

¶ 10 On cross-examination, Hackney testified that a grinder is a "huge" machine, "bigger than a semi." At the time of the accident, claimant was walking in front of the grinder, off toward one side. Claimant was about two or three feet from the grinder. Hackney worked with claimant frequently, but not every day. Hackney advised claimant to report the injury to her supervisor. Hackney reiterated that she saw the asphalt strike claimant on the left shin (where she later

observed a "knot") and that claimant then fell on her left knee. Hackney thought that the day of the accident was the last day she worked with claimant, though she recalled speaking to her subsequent to the accident.

¶ 11 Dr. David Mehl, claimant's treating physician, also testified via evidence deposition. Mehl testified that he is a board-certified orthopedic surgeon. At the time of his deposition, he had been practicing for over 19 years. He first treated claimant on May 16, 2011. She reported that a "slab of asphalt [had] struck the inside of her left knee." Claimant was referred to Mehl by claimant's family physician, Dr. Charlotte Mitchell. Claimant complained of pain and bruising in her knee. Mehl examined claimant's knee and noted skin discoloration. Her knee was tender, but she had full range of motion with mild crepitation. Mehl diagnosed a tear of the meniscus, "a benign distal femoral bone cyst," and "mild degenerative disease." He recommended a "right knee arthroscopy with partial medial meniscectomy and any chondroplasty that might be necessary." He performed the surgery on May 31, 2011. When he performed the surgery, he found no meniscus tear. Instead, he noted "areas of post-traumatic chondromalacia" and a "plica" which is an "inflammatory band of tissue." He excised the plica.

¶ 12 Mehl saw claimant on June 3, 2011, for a postoperative evaluation. He ordered physical therapy and prescribed Vicodin for pain. In July and August, claimant complained of increased pain and exhibited a diminished range of motion. Mehl subsequently ordered Synvisc injections. Following surgery, Mehl observed "post-traumatic degenerative disease."

¶ 13 The following exchange occurred between claimant's counsel and Mehl:

> "Q. Okay. Do you have an opinion based on a reasonable degree of medical certainty as to whether there is a causal relationship between [claimant] being struck on the inside of

her left knee while on the job by a slab of asphalt and the condition that you diagnosed and operated for?

A. Yes.

Q. What is your opinion?

A. It is my opinion that the injuries she sustained on September 16th, 2010, as you identified, did cause injury to the articular cartilage of the patella and the lateral tibial plateau and also resulted in the formation of the plica, all three of which required surgical treatment and subsequently have required further treatment as outlined in this deposition."

Mehl further opined that, with the exception of the plica which was removed during claimant's surgery, claimant's condition was permanent.

¶ 14 On cross-examination, Mehl clarified that he recommended surgery when he first examined claimant. He explained that a traumatic injury to the cartilage typically involves flap tearing while a degenerative injury simply involves "thinning or wearing." Crepitus would be consistent with a flap tear. Plica usually does not form in response to degeneration. On redirect-examination, Mehl testified that outside of the areas where claimant's cartilage was showing signs of traumatic injury, the rest of it was in "good condition."

¶ 15 Dr. Mark Levin, who examined claimant on respondent's behalf, also testified via evidence deposition. Levin stated that he is a board-certified orthopedic surgeon. He examined claimant on June 5, 2012. Levin conceded that he did not have a "complete independent recollection" of the examination. Claimant told Levin that, on September 16, 2010, "a chunk of asphalt flew off the grinder" and stuck her in the "inner back area of her left knee." This caused her to fall. Claimant kept working, though she was in pain. She was able to work full duty until

the seasonal lay off. At the time of Levin's examination, claimant was experiencing persistent swelling, numbness, and difficulty sitting and walking. Levin conducted a physical examination. An X ray showed symmetrical narrowing of the articular cartilage in both knees.

¶ 16 Levin believed that the "findings described in the operative report" and the location of her complaints did not fit with the "mechanism of injury." Levin opined that claimant's accident of September 16, 2010, "is not the cause of the conditions that [claimant] currently complained about as of June 5 or as documented by Dr. Mehl as being post-traumatic." He added, "It's not a post-traumatic condition from that injury date." He based his opinion on the location of the injury, the fact that claimant did not seek treatment until February 2011, that an MRI showed no post-traumatic conditions, and that the location of the pathology in the operative report did not correlate with the mechanism of injury. He disagreed with Mehl's diagnosis of chondromalacia in the medial femoral compartment. He also did not agree that a flap tear was present. While the treatment claimant received was reasonable, Levin opined that it was not causally related to her at-work accident.

¶ 17 Levin testified that claimant had a "very good-looking knee" with "no evidence of any osteoarthritis." He did not observe any relevant pre-existing conditions. Given claimant's lack of osteoarthritis, Levin would not have prescribed Synvisc.

¶ 18 On cross-examination, Levin agreed that claimant related a consistent history of injury to him and Mehl. Levin stated that he charges $1,475 per hour for depositions, as he does for all his medicolegal work. Ninety percent (approximately) of his medicolegal work is performed on behalf of respondents.

¶ 19 Dr. Samuel Chmell testified via evidence deposition as well. He is a board-certified orthopedic surgeon and teaches at the University of Illinois Hospital. He examined claimant at

the request of her attorney. Claimant reported that she was injured at work when she was struck by a slab of asphalt and fell to the ground. She had an immediate onset of pain and swelling in her left knee. Chmell recounted claimant's treatment history in a manner largely consistent with other doctors who testified. He conducted a physical examination. He noted that claimant was five feet tall and weighed 125 pounds. Claimant moved with a limp. Claimant could not fully straighten her left knee, which made her left leg shorter. Chmell noted crepitus in the left knee. Chmell reviewed claimant's medical records and the depositions and associated records of Mehl and Levin. Chmell diagnosed claimant with post-traumatic chondromalacia, left knee patella and lateral tibial articular surface and aggravation of the plica status post arthroscopy." He opined the conditions he diagnosed were causally related to claimant's at-work accident of September 16, 2010. He noted a flap tear, which he believed was formed by the trauma of the accident. He also opined that physical work restrictions were warranted and that the need for them was related to the accident as well.

¶ 20 On cross-examination, Chmell testified that he did not know exactly where the asphalt struck claimant. He also did not know the size of the piece of asphalt, how heavy it was, or how much force it struck claimant with. However, he stated that it was "more significant that she fell afterwards." Chmell stated that the damage he observed in photographs taken during the operation indicated that the damage was localized to one area, which would suggest a traumatic origin. The fact that claimant delayed seeking treatment did not "negate her having an injury six months earlier." That claimant continued to work did not affect his opinion. While claimant may have had some pre-existing arthritis, it was not symptomatic. Chmell opined that claimant had "post-traumatic chondromalacia" caused by her at-work accident. He further stated that the mechanism of injury described was consistent with claimant's injuries. Chmell disagreed with

Levin on this point and stated that he found "it very unusual to dispute the causation of chondromalacia of the kneecap when there is a fall." On redirect-examination, Chmell testified to the extent claimant had a pre-existing chondromalacia, the accident could be said to have aggravated it.

¶ 21 The arbitrator found that claimant failed to prove a causal connection between her condition of ill-being and her at-work accident on September 16, 2010. He found claimant's testimony regarding the mechanism of injury to lack credibility, noting that she stated that she was struck in the left knee. This was contradicted by Hackney's testimony that she was struck in the left shin. Further, at the conclusion of her testimony, claimant acknowledged having a knot on her left shin. It was also, according to the arbitrator, inconsistent with the history claimant gave to the three doctors who testified in this case. The arbitrator further cited the fact that claimant continued to work full-duty after the accident and did not seek medical care until four months after the accident. The arbitrator expressly found that Levin was credible and that Mehl and Chmell were not persuasive. The Commission affirmed, adopting the decision of the arbitrator, and the trial court confirmed the Commission. This appeal followed.

¶ 22 III. ANALYSIS

¶ 23 At issue in this appeal is whether the Commission's decision regarding the causal relationship between claimant's accident and condition of ill being is erroneous. Causation presents a question of fact. *Land & Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). As such, we will reverse only if the Commission's decision was contrary to the manifest weight of the evidence. *Id*. A decision is against the manifest weight of the evidence only if an opposite conclusion is clearly apparent. *Id*. It is primarily the role of the Commission to weigh and resolve conflicts in the evidence, assess the credibility of witnesses, and draw inferences

from the record. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206-07 (2003). It is not our function simply to substitute our judgment for that of the Commission. *Id.* at 206. We owe particular deference to the Commission in the medical arena, where its expertise is well recognized. *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566 (1979). The burden in the proceedings below was on claimant to prove each and every element of her claim. *Johnson Outboards v. Industrial Comm'n*, 77 Ill. 2d 67, 69-70 (1979). This includes causation. *Land & Lakes Co.*, 359 Ill. App. 3d at 592.

¶ 24 In this case, the record clearly reveals adequate evidence to support the Commission's decision. Levin flatly opined that there was no causal relationship between claimant's condition and her accident. He opined that the "findings described in the operative report" and the location of her complaints did not fit with her "mechanism of injury." There was also evidence (particularly the testimony of claimant and Hackney as to the existence of a knot on claimant's shin) to support Levin's opinion. Thus, there was sufficient evidence for the Commission to infer there was no impact to the claimant's left knee as a result of the flying asphalt. Furthermore, that claimant continued to work full duty for several months and did not seek treatment for over four months, while not dispositive, certainly supports an inference that undermines a causal relationship. It is true that some evidence in the record supports claimant's position, namely, the testimony of Mehl, Chmell, and claimant herself. However, we cannot say that this evidence is so compelling that an opposite conclusion to the Commission's is clearly apparent. In short, it provides us with no basis to reverse the Commission.

¶ 25 Claimant, however, argues that this result should not obtain. In support of her position, she cites two cases. The gist of claimant's argument is that the Commission focused on the mechanism of injury in terms of where the asphalt struck claimant's leg without considering her

subsequent fall after being struck. Claimant first relies on *Tolbert v. Illinois Workers' Compensation Comm'n*, 2014 IL App (4th) 130523WC. In that case, according to claimant, the Commission "completely discounted one causal factor which was supported by the evidence in favor of another." This court reversed. *Id*. ¶ 95. In *Tolbert*, the claimant suffered from respiratory distress after being exposed to dust that included dried bird feces. He was diagnosed with a lung condition—histoplasmosis—that is caused by exposure to bird feces. The Commission found the claimant had failed to prove causation. *Id*. ¶ 2. Citing the claimant's history of smoking, the Commission found that histoplasmosis was not a factor in his ensuing condition of ill-being. We note that this court first discussed in detail the opinions of the various experts that testified in that case and explained the flaws in the opinion of the respondent's expert. *Id*. ¶ 55-61. We then found that while the respondent's expert was concerned about the claimant's smoking, he did not rule it out as a causative factor. *Id*. ¶ 62. We emphasized that the claimant did "not have the burden to prove that the employment was the sole causative factor or even that it was the principal causative factor, but only that it was a causative factor." *Id*. ¶ 62. We then found that the claimant had presented clear evidence that histoplasmosis was a cause of his condition of ill-being and the respondent presented nothing to refute this evidence. *Id*. ¶ 63. As such, we held that the Commission's decision was against the manifest weight of the evidence. *Id*. We do not find *Tolbert* to be significantly on point. Unlike the expert in *Tolbert*, Levin did rule out claimant's accident as a cause of her condition of ill-being. Furthermore, the present case did not involve multiple causes—some compensable, some not. Thus, the principle relied on in *Tolbert*, that an accident need only be *a* cause and not the sole or primary cause, is not at issue in this case. *Tolbert* provides limited guidance at best.

¶ 26 Claimant also cites *Gross v. Illinois Workers' Compensation Comm'n*, 2011 IL App (4th) 100615WC. In *Gross,* the claimant was a smoker and had been exposed to coal dust due to his employment as a miner. He was diagnosed with chronic obstructive pulmonary disorder (COPD), coal workers' pneumoconiosis (CWP), and histoplasmosis—his appeal was limited to COPD and he abandoned claims based on the other conditions. *Id*. ¶ 3. His expert opined that his COPD was caused by a combination of smoking and exposure to coal dust; the respondent's expert testified that its cause was simply the claimant's smoking. The Commission gave greater weight to the respondent's expert.

¶ 27 This court reversed. *Id*. ¶ 26-27. We held as follows:

> "Ordinarily, we would not reverse the Commission when its decision is based upon the amount of weight to be given expert opinions. Here, however, it is apparent from the record that at the arbitration hearing the primary focus of the parties' evidence was the claimant's claim for CWP. The decision of the arbitrator, which was adopted by the Commission, contains extensive analysis of the CWP claim and no analysis of the COPD claim. Thus, it is reasonable to conclude that the Commission, in giving the opinions of [the respondent's expert] greater weight on the CWP claim, also simply adopted his general opinion that none of the claimant's diagnoses are related to his inhalation of coal dust." *Id*. ¶ 25.

Thus, *Gross* involved the Commission confusing evidence pertinent to an abandoned claim with the claim that was pending before it. This did not occur in the present case.

¶ 28 Thus, we find both *Gross* and *Tolbert* distinguishable. As noted earlier, Levin's opinion coupled with claimant's delay in seeking medical treatment and the fact that she continued to work full duty for a substantial period of time after the accident provide adequate support for the

Commission's decision such that we cannot say it is contrary to the manifest weight of the evidence.

¶ 29 Claimant asks, in the alternative, that we remand this case to allow the Commission to address the "causal relationship between [claimant's] fall and her condition of ill being." Claimant argues that the Commission did not make sufficient findings to allow for meaningful judicial review. See *R & D Thiel v. Illinois Workers' Compensation Comm'n*, 398 Ill. App. 3d 858, 866 (2010). However, regarding the adequacy of findings, we have previously explained as follows:

> "The arbitrator and the Commission are required to make findings of fact and law. [Citation.] There is no requirement, however, that the findings be stated in any particular language. [Citation.] Findings regarding the evidence may be implied from the Commission's decision. [Citation.]" *Illinois Bell Telephone Co. v. Industrial Comm'n*, 265 Ill. App. 3d 681, 686 (1994).

The failure to set forth a separate conclusion on a single point has been held not to require a remand to the Commission. *Great Plains Gas Co. v. Industrial Comm'n*, 101 Ill. 2d 122, 127-28 (1984).

¶ 30 Here, the Commission expressly addressed causation, it simply did not comment on claimant's theory that the subsequent fall, rather than the initial impact from the asphalt, is what caused her injury. Nevertheless, evidence of the fall was before the Commission. Indeed, it formed an essential part of Chmell's opinion. Though it did not comment in detail, the Commission rejected Chmell's opinion. As such, it is plainly inferable that the Commission did not find claimant's fall theory persuasive.

¶ 31 IV. CONCLUSION

¶ 32 In light of the foregoing, the order of the circuit court of Cook County confirming the decision of the Commission is affirmed.

¶ 33 Affirmed.