2012 IL App (2d) 110596WC-U

Workers' Compensation
Commission Division
Filed: February 17, 2012

No. 2-11-0596WC

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

IAN JOHNSON,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Lake County
	)	
v.	)	
	)	No. 10 MR 2015
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, et al.,	)	
(ARI Environmental, Inc.,	)	Honorable
	)	Jorge L. Ortiz,
Appellee).	)	Judge Presiding.

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

O R D E R

Held: The decision of the Commission, finding that the claimant failed to prove that his condition of ill-being was causally related to his employment accident, is neither against the manifest weight of the evidence nor contrary to law.

¶ 1 The claimant, Ian Johnson, appeals from an order of the circuit court of Lake County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission), finding that he failed to prove the existence of a causal relationship between his condition of ill-being and an accident that he alleged occurred while he was working for ARI Environmental, Inc. (ARI) and, as a consequence, denying him any benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 et seq. (West 2004)). For the reasons which follow, we affirm.

¶ 2 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on December 17, 2009.

¶ 3 In December 2008, the claimant was employed by ARI, which provides all of the air-emissions monitoring for its client, Marathon Oil Company (Marathon), and ensures that Marathon's operations are in compliance with EPA standards. The claimant was employed as a technician to monitor oil-refinery equipment and test for hydrocarbon emission leaks. Emissions are checked with a machine called a TVA, which looks like a laptop computer and is carried in a backpack. The backpack contains a hose that is attached to a hand-held scanning device, referred to as a "leak tracker." The TVA, which contains a hydrogen flame, is a highly sensitive machine and is not made to withstand falls. The technician uses the TVA and the scanning device to check on valves, pumps and compressors to ascertain whether there are any leaks. If a leak is discovered, the technician tags the location so it can be repaired by Marathon. The technician matches the tag from the scanning device to the tag hanging on the valve in order to monitor the valve. The information derived from the technician's activities is accumulated in the TVA and, at the end of the work day, the information is collected and incorporated into a report indicating which tags were monitored, the time it took to

perform that task, and the total monitoring time for the day.

¶ 4 On December 19, 2008, ARI initiated an investigation regarding the falsification of monitoring data. The investigation indicated that the claimant and two coworkers had falsified data to reflect that they had monitored temporary equipment components that were not located at the site. Brian Whitley, ARI's compliance manager, testified that he spoke with the claimant sometime between December 19 and December 24, 2008, regarding the monitoring of the components that were the subject of the investigation.

¶ 5 On the morning of December 24, 2008, the claimant clocked into the refinery facility at 7:15 a.m. and clocked out at 11:54 a.m. Paul Alger, ARI's on-the-job supervisor, testified that, when the claimant returned from lunch, they had a conversation about the report on the investigation into fraudulent-monitoring activities. Though the claimant returned to the refinery facility after lunch, the daily report reflects that he performed a total of 176 checks that day and did not register any emission scans after 11:46 a.m., while his coworkers, Brian Loveless and Corey Groves, registered 352 and 345 checks, respectively, including scans performed in the afternoon.

¶ 6 The claimant testified that, after speaking with Alger, he drove to the tank farm with Loveless and Groves. According to the claimant, it was raining lightly, and the three men sat in the truck to wait for the rain to stop and for the area to dry up a little before they returned to work. The claimant testified that, at about 2 p.m., he proceeded up a flight of steps on the exterior of the facility, which were 3 ½ feet wide and were constructed of steel grating. He had walked up approximately 20 steps when his right foot slipped on a wet stair, causing him to tumble backward, head over heels, all the way to the ground. His hand-held scanning device fell on the top of the steps, and the TVA was in

his backpack, along with his tools. According to the claimant, he landed on his back at the bottom of the steps. Because he left his radio in the office, he used his cell phone to call for assistance. The claimant was taken by ambulance to the emergency room at Crawford Memorial Hospital.

¶ 7 The emergency room records indicate the claimant reported that he fell down approximately 20 steps and landed on an "air pack" that he was wearing on his back. He complained of pain in the posterior neck, upper back, and between the scapulae, and he had a "very minor abrasion" to his right shin. Though he was moving stiffly, all of his tests were normal. He was diagnosed as having a cervical strain, and was told to follow-up with Dr. Nick A. Vlachos in three days.

¶ 8 The claimant returned to the emergency room the following day and reported that the was experiencing more neck pain. He was moving stiffly and, upon examination, it was noted that he had limited range of motion in his cervical, thoracic and lumbar areas, along with a paraspinous spasm. In addition, he was tender on palpitation. The results of a CT scan and of x-rays of his neck, thoracic and lumbar spine were all negative. He was diagnosed with a cervical strain, along with musculoskeletal pain, and he was told he could return to light-duty work the next day.

¶ 9 The claimant saw Dr. Vlachos on December 29, 2008. At that time, he complained of severe pain in his neck, head and between his shoulders and of moderate pain in his coccyx. He reported that he believed he hit his head when he fell down the 20 steps and that he had been experiencing severe headaches. In addition, he reported that he could not move his neck. He further stated that he had not experienced any prior neck or back injuries. In his treatment note of this examination, Dr. Vlachos observed that the claimant "was chuckling" and did not appear to be in pain. Dr. Vlachos further observed that he not find any bruising, swelling, or other deformity on the claimant's

body and that, though the claimant stated he could not move his neck more than a few degrees in any direction, there were no muscle spasms and no tenderness to his posterior neck. Dr. Vlachos diagnosed a contusion of the neck and noted that the claimant's descriptions of his pain and symptoms were essentially subjective and were not clearly supported by objective findings. Dr. Vlachos noted that he could not explain the severity of the claimant's complaints and did not know whether his complaints arose from the injury, from the fact that the claimant had been using a cervical collar for four days, or from some other cause. Because the claimant had no spasms or skin injury, Dr. Vlachos concluded that his injury did not appear serious and should resolve completely within a short time. Dr. Vlachos prescribed medication for pain and told the claimant to remove the cervical collar every 30 minutes, perform retraction and extension exercises hourly, return for a follow-up visit in 24 hours, and discontinue use of the cervical collar at that time. He released the claimant to work light duty, with restrictions of not lifting more than 20 pounds and no climbing. On his report of this visit and all subsequent visits, Dr. Vlachos checked a box indicating that the claimant's injury was "work related."

¶ 10 The claimant returned to Dr. Vlachos the following day and complained of increased and severe headaches and of pain in his back, between his shoulders, and in his neck. He also stated that the pain was more severe when he turned his head. During the exam, the claimant stated that he was unable to move his cervical spine in any direction and that pressure on his posterior neck caused a severe increase in his pain. In addition, Dr. Vlachos noted that he could barely touch the claimant without him crying out in pain. However, Dr. Vlachos observed that, during the office visit, the claimant was "sitting comfortably," was "jovial again," and did not have the appearance of a patient

in severe pain. Also, both Dr. Vlachos and his nurse observed that the claimant nodded his head to acknowledge the instructions he had been given regarding exercises and follow-up care. This head movement, which consisted of flexion and extension, exceeded the range of motion that the claimant had demonstrated during the physical examination. Dr. Vlachos opined that the exam of the claimant's neck was incongruous with the other information relating to his condition. Though the claimant stated that he was unable to move his neck in any direction and reported that he had very severe pain after falling down 20 stairs, there were no bruises, scrapes, or bumps anywhere on his body, and the CT scan of his head and his x-rays were normal. Dr. Vlachos reiterated his previous diagnosis of a neck contusion, but concluded that he could not release the claimant from his care without a negative cervical MRI scan. Dr. Vlachos prescribed a cervical MRI, medication, and exercise, and he instructed the claimant to return for a follow-up visit the next day.

¶ 11 When the claimant saw Dr. Vlachos on January 2, 2009, he complained of headaches and of "popping" in his low back when he sitting up from a reclining position, but his range of motion in his neck had improved. The claimant walked "gingerly" with a stiff neck, turned his body along with his neck, and moved his neck only a few degrees in any direction. He had some tenderness when the lower sacrum was palpated, but he had no spasms of the neck or back. Dr. Vlachos again diagnosed a neck contusion and noted that he would recheck the claimant after the cervical MRI was performed.

¶ 12 The claimant next saw Dr. Vlachos on January 7, 2009. At that time, he reported some improvement based on an increase in his cervical range of motion, but he also stated that he continued to have severe neck pain and "unbearable" headaches, causing difficulty in sleeping. In

his treatment note of this visit, Dr. Vlachos observed that the claimant was smiling and did not appear to be in any pain. An examination of his neck demonstrated no spasms, that he was capable of flexion almost to his chest, and that his extension was almost completely normal. He was able to rotate symmetrically and had full range of motion of the lumbar spine, and his back exam was normal. Dr. Vlachos opined that the claimant displayed primarily subjective complaints that were not associated with any clear objective findings of serious neck or back pathology. Dr. Vlachos noted that he suspected there was some "functional overlay" due to the claimant's job situation and that the claimant might have been magnifying his symptoms. Dr. Vlachos also observed that, because the claimant's condition appeared to be self-limiting, a cervical MRI was not required, and he would likely have a full recovery without any complaints of residual pain.

¶ 13 The claimant was last seen by Dr. Vlachos on January 14, 2009. On that date, he complained of numbness in his right hand and into his pinky and ring fingers and that he began experiencing this new symptom on three days earlier. The claimant reported that his neck was improving and that he still had headaches at time, but he did not have any back pain on that day. During the examination, the claimant was smiling and did not appear ill. The cervical x-ray taken on that date showed no acute bony changes and no significant degenerative change. Though the cervical CT scan report showed a fusion at C7-T1, the claimant demonstrated almost a full range of motion in his neck. Dr. Vlachos again diagnosed a neck contusion and directed the claimant to follow-up in two weeks, but the claimant did not return to Dr. Vlachos' care after this examination date.

¶ 14 The claimant began treating with Dr. Michael Phillippe on February 10, 2009. On that date, he reported that he had fallen down 20 steps on an exterior platform on December 24, 2008. In

addition to worsening neck pain, he complained of numbness and tingling in the left forearm, left ring finger, and left small finger, which began two weeks after the fall. He also complained of severe headaches, but stated that he thought his back pain was improving. Upon examining the claimant, Dr. Phillippe found that he had decreased strength in abduction of his fingers on the left hand and slightly decreased strength on the grip of the left hand. He had tenderness over the spinous processes of the cervical spine and the seventh cervical vertebrae. He also had limited range of motion, as well as limited flexion, extension, and rotation due to pain. Dr. Phillippe concluded that these examination results indicated a problem involving the nerve from the neck that controls the left arm. Dr. Phillippe diagnosed neck pain, a concussion, and an ulnar nerve lesion. He commenced treatment with medication, ordered cervical and head MRIs, and instructed the claimant to follow-up in two weeks.

¶ 15 A cervical MRI, performed on February 16, 2009, showed a left paracentral disc herniation at C5-6, with straightening of the cervical lordosis, as well as a partial fusion of C7-T1 disc space on the left side, which Dr. Phillippe believed might have been congenital or related to a previous injury. Because the herniated disc was on the left and abutted the location where the nerve emerged, Dr. Phillippe determined that this circumstance was consistent with the findings of weakness in the claimant's left arm. In addition, the straightening of the lordosis indicated that the claimant was experiencing muscle spasms. Dr. Phillippe referred the claimant to a neurosurgeon on February 19, 2009.

¶ 16 During a visit on February 24, 2009, the claimant reported that he had begun experiencing a new onset of headaches, but Dr. Phillippe did not believe the migraines were related to the

claimant's employment accident. In addition, the claimant reported that, when he bent over to pick his baby up off the floor the previous day, he felt a tingling in the left side of his neck, which was not alleviated by pain medication. Dr. Phillippe tool the claimant off work until his herniated disc was treated surgically, and he again referred the claimant to a neurosurgeon. On April 29, 2009, Dr. Phillippe diagnosed the claimant's condition as a herniated disc syndrome, and he recommended traction therapy. On May 7, 2009, Dr. Phillippe noted that the claimant's condition had not changed, and he prescribed physical therapy. The results of an EMG/NCV of the claimant's left arm in June 2009 were normal and showed that there was no ulnar neuropathy. The claimant continued to treat with Dr. Phillippe through September 11, 2009, and his condition remained unchanged.

¶ 17 At his evidence deposition, Dr. Phillippe expressed his opinion, within a reasonable degree of medical certainty, that the claimant's condition of ill-being could have been caused or aggravated by his work-related accident on December 24, 2008. However, when Dr. Phillippe was questioned as to whether his opinion was based, in part, on his review of the claimant's prior medical records and treatment notes, he stated that he did not recall reviewing those documents, which did not contain a time stamp indicating that he had read and considered them. During the course of his deposition, Dr. Phillippe reviewed the emergency-room records and Dr. Vlachos' treatment notes. After considering the previous treatment records, Dr. Phillippe changed his expert opinion regarding causation, stating that he did not know whether there was a cause-and-effect relationship between the claimant's employment injury and his current condition of ill-being. In particular, Dr. Phillippe stated that, although he never observed any symptom magnification, Dr. Vlachos' notes indicated that the claimant's neck stiffness was not real and that he was "acting" or exaggerating his symptoms.

According to Dr. Phillippe, Dr. Vlachos' treatment notes caused him to suspect that the claimant had not suffered a serious neck injury and that his symptoms may not have been real. In addition, Dr. Phillippe testified that the claimant's symptoms did not "fit" with the disc problems reflected by the results of the January 2009 MRI. He further stated that, though the straightening of the lordosis cannot be faked and was visible on the February 2009 MRI, the lack of radiculopathy shown on the EMG/NCV made him doubt his original diagnosis. Moreover, Dr. Phillippe testified that the claimant's disc herniation could have occurred when he bent down to pick his baby up from the floor, and that would explain why the claimant did not experience the tingling sensation on the left side of his neck until several weeks after the accident. Dr. Phillippe testified that he was no longer sure that the claimant's condition was causally connected to the December 2008 accident, and he could not say that his previously expressed causation opinion was within a reasonable degree of medical certainty.

¶ 18 The claimant testified that, as of the date of the hearing, he continued to suffer from extreme and constant pain in his neck, low back, and left wrist and that the pain caused severe headaches. The claimant acknowledged that he spoke with Alger after lunch on the day of the accident, but he denied being told that the was under investigation for falsifying documents. According to the claimant, this conversation took place five days later on December 29, 2008. In addition, he denied ever having a conversation with Brian Whitley about the investigation into fraudulent monitoring activities. The claimant further testified that the daily monitoring report for December 24, 2008, did not contain accurate information. He explained that, after lunch, Loveless and Groves sat in a vehicle and repeatedly "clicked" their scanning devices, even though they were not actually

monitoring the valves. According to the claimant, Loveless and Groves "knew how to work the system," and they would then "sweep monitor" to catch up to what they had "clicked through." The claimant further testified that he was suspended on December 29, 2008, which was the first time he had heard about the investigation into falsified monitoring activities, and he was surprised by this information. Based on the results of that investigation, the claimant and two other employees were terminated on January 5, 2009.

¶ 19 ARI presented the testimony of Paul Alger and of Thomas Sparks, a machinist for Marathon, both of whom testified that the steps from which the claimant had fallen could not collect water because the treads were grated. Alger and Thomas also stated that they observed the steps on the date of the accident, and they did not appear to be wet. In addition, Brian Whitley and Sparks testified that they did not see any scratches, bleeding, bruising, or abrasions on the claimant's face or hands after he fell. Whitley further stated that the claimant's hand-held scanning device was not damaged, nor was his TVA, which was properly calibrated and worked fine after the accident. Whitley testified that if the TVA had fallen down 20 stairs, it would look "like a broken train wreck," and the fact that it was undamaged indicated to him that it had not been involved in such an incident.

¶ 20 Following the hearing held pursuant to section 19(b) of the Act (820 ILCS 305/19(b) (West 2008)), the arbitrator issued a decision, finding that the claimant sustained a work-related injury on December 24, 2008, and that the current condition of ill-being arose out of and in the course of his employment with ARI. The arbitrator determined that the claimant was entitled to temporary total disability (TTD) benefits for 44 3/7 weeks from February 10, 2009, through the date of the hearing on December 17, 2009. The arbitrator also determined that the claimant was entitled to recover

$18,794.77 for reasonable and necessary medical expenses related to that injury and to the cost of the neurosurgical consultation recommended by Dr. Phillippe.

¶ 21 ARI sought review of the arbitrator's decision before the Commission. The Commission reversed the decision of the arbitrator, finding that the claimant was not entitled to benefits under the Act because he failed to prove that his current condition of ill-being was causally connected to the December 24, 2008, employment accident. In particular, the Commission determined that Dr. Phillippe's causation opinion was insufficient because it was equivocal, failed to satisfy the level of a reasonable medical certainty, and was not supported by a proper evidentiary foundation.

¶ 22 The claimant sought judicial review of the Commission's decision in the circuit court of Lake County. The circuit court confirmed the Commission's decision, and this appeal followed.

¶ 23 Initially, we note that ARI has argued that the circuit court's judgment, which confirmed the Commission's decision, should be affirmed because the evidence presented at the arbitration hearing suggests that the claimant did not actually fall down the flight of steps, as he claimed. The record demonstrates, however, that the arbitrator made a factual finding that the claimant suffered an employment injury on December 24, 2008, and the Commission did not reverse that finding. The record also establishes that ARI did not raise this issue in the circuit court. Consequently, ARI's argument that the claimant did not actually sustain a work-related accident has been forfeited on appeal and need not be addressed here. See Chambers v. Industrial Comm'n, 139 Ill. App. 3d 550, 553-54, 487 N.E.2d 1142 (1985).

¶ 24 On appeal, the claimant argues that the Commission applied an improper legal standard in finding that he had not established a causal connection between the December 2008 work-related

accident and his current condition of ill-being, and, therefore the Commission's decision is against the manifest weight of the evidence and is contrary to law. We disagree.

¶ 25 A claimant has the burden of proving by a preponderance of the evidence that his injury arose out of and in the course of the employment. 820 ILCS 305/2 (West 2008); Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 203, 797 N.E.2d 665 (2003). The "arising out of" component addresses the causal connection between a work-related injury and the claimant's condition of ill-being. Sisbro Inc., 207 Ill. 2d at 203. Thus, a claimant must establish that his employment was a causative factor with respect to his physical disability. Steiner v. Industrial Comm'n, 101 Ill.2d 257, 261, 461 N.E.2d 1363 (1984). The factual question of whether a causal relationship exists is peculiarly within the province of the Commission, and its decision will not be set aside unless it is contrary to the manifest weight of the evidence. Certi-Serve, Inc. v. Industrial Comm'n, 101 Ill. 2d 236, 244, 461 N.E.2d 954 (1984), 958; University of Illinois v. Industrial Comm'n, 365 Ill. App. 3d 906, 910, 851 N.E.2d 72 (2006). It is for the Commission to draw reasonable inferences and conclusions from the competent evidence, and a reviewing court must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn. Sisbro, Inc., 207 Ill. 2d at 206. For a finding of fact to be against the manifest weight of the evidence, an opposite conclusion must be clearly apparent. University of Illinois, 365 Ill. App. 3d at 910.

¶ 26 In challenging the finding that his current condition of ill-being is not causally connected to his work-related accident, the claimant contends that the Commission erred in its assessment of the evidence and the weight to be accorded Dr. Phillippe's testimony. Thus, the claimant essentially is asking us to reweigh the evidence that was presented at the hearing. However, it was within the

province of the Commission to judge the credibility of the witnesses, resolve any conflicts in the testimony, and draw reasonable inferences from the evidence presented. See Sisbro Inc., 207 Ill. 2d at 207.

¶ 27 The Commission found the testimony of Dr. Phillippe was not sufficient to establish a causal connection between the claimant's December 2008 employment accident and his current condition of ill-being. Specifically, the Commission determined that Dr. Phillippe's causation opinion was not persuasive because it was equivocal, failed to satisfy the level of a reasonable medical certainty, and was not supported by a proper evidentiary foundation. Based on the record presented, we cannot say that the Commission's finding of no causal connection is against the manifest weight of the evidence.

¶ 28 We also reject the claimant's contention that the Commission's decision is contrary to law. In support of this argument, the claimant asserts that the Commission applied an improper legal standard by ignoring Dr. Phillippe's "unrebutted" testimony that the December 2008 accident might or could have caused or aggravated his condition of ill-being and by ignoring Dr. Vlachos' notations that the accident was "work related." We do not agree.

¶ 29 Though a finding of a causal relationship may be based on expert medical testimony that an accident "could have" or "might have" caused an injury (see Freeman United Coal Mining Co. v. Industrial Comm'n, 318 Ill. App. 3d 170, 174, 741 N.E.2d 1144 (2000)), the presentation of such evidence does not mandate a finding of causation where the Commission finds that it is unpersuasive. The Commission is obligated to consider all of the evidence and draw reasonable inferences and conclusions therefrom; this court may not disregard or reject those inferences merely because other inferences might be drawn. Sisbro, Inc., 207 Ill. 2d at 206.

¶ 30 Although ARI did not present a medical expert to contradict the testimony of Dr. Phillippe, we do not believe that his causation opinion can be fairly characterized as "unrebutted" where he testified that he could not say, within a reasonable degree of medical certainty, that the claimant's current condition of ill-being was causally connected to the December 2008 accident. Indeed, Dr. Phillippe stated that he did not know whether there was a cause-and-effect relationship between the claimant's employment injury and his current condition of ill-being, and Dr. Vlachos' treatment notes caused him to suspect that the claimant had not suffered a serious neck injury and that his symptoms may not have been real. Dr. Phillippe also testified that the claimant's symptoms were not consistent with the results of certain diagnostic tests, which caused him to doubt his original diagnosis. Contrary to the claimant's assertion, the Commission was not required to find a causal connection where Dr. Phillippe equivocated and contradicted his own causation opinion. The Commission's interpretation of Dr. Phillippe's testimony constituted a factual finding that the claimant had failed to establish causation, and that determination is not contrary to law merely because other inferences might be drawn from the evidence.

¶ 31 Based upon the foregoing analysis, we affirm the judgment of the circuit court, which confirmed the Commission's decision denying the claimant benefits under the Act.

¶ 32 Affirmed.