2015 IL App (3d) 140796WC-U
NO. 3-14-0796WC
Order filed December 15, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

PENNY GRIFFITH,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Peoria County.
	)	
v.	)	No. 13-MR-266
	)	
THE ILLINOIS WORKERS'	)	Honorable
COMPENSATION COMMISSION *et al.*	)	Michael P. McCuskey,
(Kroger, Appellee).	)	Judge, presiding.

JUSTICE STEWART delivered the judgment of the court.

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

ORDER

¶ 1 *Held*: The Commission's finding that the claimant failed to prove that the conditions of ill-being in her cervical spine are causally related to her workplace accident is not contrary to the manifest weight of the evidence.

¶ 2 The issue in this workers' compensation appeal centers on whether the claimant, Penny Griffith, proved that her cervical spine conditions are causally related to a work-related slip-and-fall accident that occurred on November 9, 2008. The employer, Kroger,

employed the claimant as a baker and cake decorator in the employer's bakery department. The accident occurred when the claimant tripped on a rug and fell to the ground. The claimant filed a claim pursuant to the Illinois Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2008)). The arbitrator found that the claimant's condition of ill-being in her cervical spine was not causally related to the workplace accident. The claimant appealed to the Illinois Workers' Compensation Commission (the Commission). The Commission affirmed and adopted the arbitrator's decision; one commissioner dissented. On judicial review, the circuit court entered a judgment confirming the commission's decision. The claimant now appeals the circuit court's judgment.

¶ 3 BACKGROUND

¶ 4 The employer does not dispute that the claimant fell at work and sustained certain injuries. The claimant maintained that the fall resulted in injuries to her right shoulder, low back, and neck. At the arbitration hearing, the parties stipulated that the employer had paid medical bills and temporary total disability benefits for injuries to the claimant's right shoulder. In this appeal, the only issue contested is whether the claimant's fall caused conditions of ill-being in her cervical spine. The evidence presented at the arbitration hearing established that the claimant had degenerative conditions in her cervical spine, and the parties submitted conflicting medical opinions on the issue of whether the workplace accident contributed to or accelerated the condition in her cervical spine.

¶ 5 The claimant testified that when she fell at work, she landed on her right side with her right arm outstretched. She immediately went to the emergency room. The emergency room records indicate that she reported "right lumbar area pain." Typed records from the emergency room state that she "twisted her back but did not actually strike her back on the ground. She landed on her left shoulder." She denied telling anyone at the emergency room that she landed on her left shoulder. She testified that she was in severe pain but distinctly remembered telling them that her right side, right shoulder, and right lower back hurt the most. Handwritten notes of Dr. Alan Rakoff from the visit are illegible. Testimony at the arbitration hearing indicated that it is possible that Dr. Rakoff transcribed the written emergency room report days after the emergency room visit, presumably based on his handwritten notes.

¶ 6 The emergency room report notes that the claimant complained of "mild left shoulder pain but said that her movement was unrestricted." At the emergency room, Dr. Rakoff's examination of the claimant revealed "right-sided lumbar muscle tenderness greater than left side." Dr. Rakoff noted in his report that "[t]here is no posterior midline tenderness in the cervical, thoracic, or lumbosacral spine." He diagnosed a lumbar strain and left shoulder contusion. He stated in his report that her back injury was muscular, "somewhat twisting-type mechanism," and that he did not see any evidence of acute radiculopathy or spinal cord syndrome. He concluded that "[t]here is no cervical injury or head injury." Dr. Rakoff discharged her with a treatment plan that included ibuprofen or Aleve, Norflex, and Vicodin, and he advised her to return if she experienced "numbness or weakness in the legs or loss of bowel or bladder control." The claimant

testified that following the fall, she had severe headaches, pain in her right shoulder, low back pain, and "electric shock" in her neck if she turned too fast or too hard.

¶ 7 The claimant did not seek any further medical treatment until January 2, 2009, when she saw Dr. Daniel Hoffman. The claimant testified that she waited two months because she wanted to see if she would get better on her own. She said that the pain in her neck eased up, but progressively got worse.

¶ 8 Dr. Hoffman's office notes from January 2 state that the claimant described the accident as occurring on November 15, 2008, rather than November 9, 2008, and that she attempted to brace herself with her right arm when she fell. She reported that she sustained an injury to her right shoulder and cervical spine causing severe pain. According to Dr. Hoffman's notes, she also reported a history of several left shoulder surgeries. Dr. Hoffman diagnosed her as having a cervical strain, a right shoulder strain, and a possible rotator cuff tear.

¶ 9 An X-ray of the cervical spine revealed degenerative disc disease and foraminal stenosis, left greater than right, at C5-6, but was negative for acute traumatic abnormalities. A right shoulder X-ray was negative for acute fracture, dislocation, joint space pathology, or significant swelling. A magnetic resonance imaging (MRI) scan of the claimant's cervical spine revealed left lateral disc protrusion at C5-6 impinging on the left C6 nerve root with narrowing of the left neural foramen and mild central disc protrusion at C2-3 and C3-4 with no disc herniation or central canal narrowing.

¶ 10 On February 17, 2009, Dr. Stephen R. Orievitch examined the claimant. She reported that she tripped over a rug at work on November 3, 2008, and tried to break her

fall with her arms extended out. She also added that she then "had two episodes where she hit her hands on the floor that jolted her shoulder." She told Dr. Orievitch that she had catching in the shoulder with electric shocks across the posterior shoulder that radiated down. She also reported intermittent numbness and tingling in her arm along with posterior neck pain. Dr. Orievitch recommended "surgery for arthroscopic acromioplasty with repair of the infraspinatus."

¶ 11 Dr. Orievitch performed right shoulder surgery on the claimant on March 26, 2009. After the shoulder surgery, the claimant underwent physical therapy and returned to work at light duty. On November 20, 2009, Dr. Orievitch opined that the claimant had reached maximum medical improvement from the shoulder injury. He discharged her from his care with instructions to return on an as-needed basis. He did not place any restrictions on her work duties.

¶ 12 During her treatment for shoulder conditions, the claimant continued to complain of neck pain. She saw Dr. Amod Sureka on February 27, 2009, and reported a two-month history of neck and low back pain caused by her workplace duties. She complained of neck pain with some radiating pain in her right arm. Dr. Sureka looked at the MRI of the claimant's cervical spine ordered by Dr. Hoffman and noted that it showed a leftward disc protrusion at C5-6. Dr. Sureka diagnosed possible lumbar facet syndrome, possible right upper extremity nerve impingement, and neck pain. He recommended that the claimant undergo an electromyogram (EMG) of her right upper extremity to determine if there is any evidence of peripheral nerve entrapment. On June 11, 2009, the claimant underwent the EMG and nerve conduction study of her right upper

extremity, which did not reveal any evidence of cervical radiculopathy or peripheral neuropathy.

¶ 13 On October 1, 2009, the claimant saw Dr. Steven Schlamberg with complaints of pain in her neck, back, and shoulders as a result of the November 2008 injury. She reported that she did not have pain in her neck and back prior to the fall. His impression included "cervicalgia and low back pain without radiculitis after injury at work." He opined that the conditions "are most significantly contributed to by her fall at her job at Kroger's in November of 2008." She returned to Dr. Schlamberg on December 10, 2009, with continuing complaints of pain in her shoulder, neck, and low back.

¶ 14 The claimant went to the emergency room on July 21, 2010, with complaints of dizziness, occasional blurred vision, severe neck pain, and tingling. An MRI scan of the claimant's cervical spine revealed herniated discs with mild cord impingement at C4-5 and C5-6. The MRI report stated that the "disc disease has progressed" when compared to the prior cervical MRI study. The discharge diagnosis included neck pain and cervical radiculopathy.

¶ 15 On August 31, 2010, the claimant consulted with a neurosurgeon, Dr. Patrick Tracy. The claimant complained of headaches, neck pain, and low back pain since a fall at work on November 11, 2008. She reported that she sustained a torn right rotator cuff from the fall and underwent right shoulder surgery and four left shoulder surgeries. She also reported that she had bilateral carpal tunnel releases. She complained of persistent neck pain, some occipital headaches, and a significant amount of low back pain. Dr. Tracy reviewed the July 21, 2010, MRI scan and concluded that it was normal except the

expected amount of age-related degenerative changes. He examined the claimant and opined that her symptoms were most likely consistent with cervical and lumbar sprain and strain or diffuse myofascial pain. He did not believe that neurological intervention would be beneficial. He referred her to a pain treatment center for pain management and suggested she consider acupuncture, therapeutic massage, or chiropractic treatments.

¶ 16 The claimant saw Dr. Kevin Henry, a pain management specialist. He administered multiple facet injections and nerve blocks in her neck area. She testified that the injections seemed to help for a while in the beginning, but the pain came back "full blown." Dr. Henry referred the claimant to a spine doctor, Dr. Richard Kube.

¶ 17 The claimant saw Dr. Kube on November 11, 2010. She complained of pain in her neck going down into her arms for the last two years that began when she fell at work. According to Dr. Kube, she said that when she fell, she had "immediate back pain and neck pain later that night." In addition, she had immediate pain in the arm on the right side. He reviewed the July 2010 cervical spine MRI scan and noted that it showed some "loss of dis[c] height at C5-6 as well as foraminal stenosis and a dis[c] protrusion at that level in addition to some degenerative change noted at that level."

¶ 18 Dr. Kube testified that the claimant demonstrated subjective and objective symptoms of disc disease, disc herniations, and spondylosis in her cervical spine. He recommended that the claimant undergo "an anterior cervical discectomy to decompress the nerves at the spinal cord and then to fuse the C5-6 segment." He opined that the claimant's need for the surgery is causally related to the November 9, 2008, workplace accident. In explaining his opinion with respect to causation, Dr. Kube testified that she

had some issues in the past with her shoulders, but after the fall at work, she had "a new type of symptom that's occurring very quite proximity timeline wise to the fall that she had." He believed that the fall could cause force on her neck "enough to be able to cause herniation in a dis[c]."

¶ 19 On cross-examination, Dr. Kube testified that the claimant did not describe hitting anything in particular or landing anywhere in particular. He believed that she had a ground-level fall and stopped very abruptly upon hitting the ground so that the injury resulted from "a deceleration type of effect." He concluded that the event that she described "certainly can be a substantial enough event or mechanism to cause a dis[c] to herniate." He explained the basis of his opinion as "[t]he fact that she is not describing having a 'neck problem' or required neck treatment or neck issues anywhere in the past until this event and now she does have some things that appear to be pretty clear with her neck from that point in time moving forward."

¶ 20 When asked about his understanding of the timing of the onset of the claimant's neck symptoms in relationship to her fall, Dr. Kube testified that she experienced neck pain later that night after the fall and that the "arm pain was fairly immediate as well." He admitted that he had not seen any of her emergency room records. When he was shown the emergency room records and saw that she did not complain of any cervical conditions after the fall, he testified that he did not find that surprising because when he ruptured a disc in his neck, he did not experience any symptoms until two days later. He opined, "it could take a day or two before you start having radicular symptoms for sure."

He also noted that if someone has multiple injuries, certain injuries can be distracting of others.

¶ 21 Dr. Kube stated that "if her pain is predominately going to be radicular coming from her neck later, then with respect to radicular pain, that's not necessarily going to show up right away from the dis[c] herniation." However, he added, "If it was a week or two, then it's not related." He testified that he would anticipate symptoms in a week or less. When asked whether it would be surprising if the claimant would not return to the doctor for almost two months, he testified, "That would be less usual."

¶ 22 Dr. Kube believed that radicular symptoms should have manifested themselves by the time of the EMG taken on June 11, 2009. As noted above, however, the EMG showed no findings of radiculopathy. He testified that the claimant could have developed cervical radiculopathy sometime after the EMG or, alternatively, the EMG was a false negative. He did not believe that the EMG study definitively ruled out cervical radiculopathy at that time.

¶ 23 At the employer's request, the claimant underwent an independent medical examination conducted by Dr. Stephen Weiss. Dr. Weiss opined that the claimant's neck problems were not related to the workplace accident because she did not experience any onset of cervical symptoms within 48 to 72 hours after the accident. The basis of his opinion was the claimant's emergency room records and her statement to him during his examination that her cervical symptoms came on a few weeks after the accident.

¶ 24 Dr. Weiss testified that he reviewed the claimant's medical records before he conducted his physical examination. He stated that, during his examination, he asked the

claimant to clarify some discrepancies he found in her medical records. The claimant told Dr. Weiss that she tried to catch herself on her outstretched right arm and fell on her right shoulder. When the doctor noted that her emergency room records stated that she fell on her left shoulder, she said that was a mistake in the record. During his testimony, the doctor also noted that the employer's accident report stated that the claimant fell on her left shoulder. In addition, the doctor noted that she said she fell on November 3, 2008, but the record stated that she fell on November 9, 2008. While examining the claimant, Dr. Weiss told her that her emergency room records did not mention neck pain. According to Dr. Weiss, she responded that her neck pain came on several weeks after the fall and gradually worsened.

¶ 25 At the time of Dr. Weiss's examination, the claimant complained that her neck constantly bothered her especially when she turned her head. His examination of her neck revealed "moderate restriction of motion" and "mild paravertebral muscle spasm in the cervical region." He testified that the claimant had multiple positive "Waddell's signs significant in number to make the diagnosis of symptom magnification."

¶ 26 Dr. Weiss diagnosed the claimant as having post rotator cuff repair and cervical disc disease, both of which he believed to be unrelated to the workplace accident. He opined that the claimant suffered a lumbar strain and shoulder contusion as a result of the accident and that both conditions caused by the accident had resolved.

¶ 27 With respect to his opinion about the claimant's cervical disc disease, Dr. Weiss explained that her neck was non-tender at the time of the original emergency room evaluation. He believed that if she had sustained a significant neck injury, particularly an

injury progressing her degenerative disc disease, she would have been more symptomatic. He believed that if she had injured her neck, she should have perceived pain within 48 to 72 hours after the fall. Because the claimant told him that she did not have any neck complaints until several weeks after the accident, he concluded that the neck condition represented a normal progression of her preexisting degenerative disc disease and was not related to the workplace accident.

¶ 28 At the arbitration hearing, the claimant testified that she would like to proceed with the surgery recommended by Dr. Kube. She testified that she still has severe headaches and has a pinched nerve when she turns her head too fast or too sharp. She said her shoulder still bothers her, but it is better since the surgery. She denied telling Dr. Weiss that her neck pain developed a few weeks after her discharge from the emergency room. She testified that she had neck pain when the fall happened and at the emergency room.

¶ 29 After considering the evidence presented at the arbitration hearing, the arbitrator concluded that there were two conflicting opinions concerning the compensability of the claimant's cervical complaints: Dr. Kube's and Dr. Weiss's. The physicians agreed that the claimant had degenerative disc disease and that cervical fusion treatment would be appropriate. However, they disagreed concerning whether the condition was related to the workplace accident. According to the arbitrator, Dr. Weiss's opinion "makes more sense," and the strength of Dr. Kube's opinion "diminishes in strength based on information that he did not know."

¶ 30 With respect to Dr. Kube's opinion that the claimant's condition was causally related to the workplace accident, the arbitrator noted that Dr. Kube admitted that the claimant did not articulate any mechanism for her fall and that he did not review any records of the claimant's medical treatments from the date of the accident to his first examination of her. The arbitrator noted that Dr. Kube believed that the claimant first experienced neck symptoms on the night of the accident but was not aware that the claimant had not returned for neck treatment for almost two months after the accident. The arbitrator noted that Dr. Kube was not aware that the claimant's EMG exam was negative for cervical radiculopathy and was not aware of the claimant's positive reaction to Waddell examinations demonstrating symptom magnification.

¶ 31 The arbitrator determined that Dr. Weiss's opinion was more convincing for two reasons. First, the arbitrator believed that the claimant correctly told Dr. Weiss that her neck pain did not arise until a few weeks after the accident. The arbitrator noted that the emergency room records have no mention of neck pain. Second, the arbitrator found it critical that the claimant did not seek out any follow-up treatment after her emergency room visit for almost two months. The arbitrator believed that the claimant's testimony was "quite clear that she had virtually debilitating symptoms to her neck and right shoulder which began almost immediately after the accident." The arbitrator concluded that it was unlikely that the claimant suffered an immediate onset of neck pain. The arbitrator found it more likely that the claimant explained the onset of her symptoms more accurately to Dr. Weiss when she stated that the neck pain came a few weeks later. The arbitrator concluded that the claimant's condition of ill-being in her cervical spine

was not causally related to her November 9, 2008, accident and that Dr. Kube's proposed surgery is not causally related to the accident.

¶ 32 On review, the Commission affirmed and adopted the arbitrator's decision. One commissioner dissented. The dissenting commissioner believed that the manifest weight of the evidence established that the undisputed workplace accident was causally connected to the cervical condition. On judicial review, the circuit court confirmed the Commission's decision, concluding that the Commission's decision is not against the manifest weight of the evidence. The claimant now appeals the circuit court's judgment.

¶ 33 ANALYSIS

¶ 34 On appeal, the claimant challenges the Commission's finding that she failed to prove that the conditions of ill-being in her cervical spine are causally related to the workplace accident.

¶ 35 In order to recover benefits under the Act, a claimant has the burden to show by a preponderance of the evidence that she suffered a disabling injury that arose out of and in the course of her employment. *Baggett v. Industrial Comm'n*, 201 Ill. 2d 187, 194, 775 N.E.2d 908, 912 (2002). The existence of a causal connection between a workplace accident and the claimant's condition of ill-being is a question of fact for the Commission to resolve. *National Freight Industries v. Illinois Workers' Compensation Comm'n*, 2013 IL App (5th) 120043WC, ¶ 26, 993 N.E.2d 473. The Commission’s findings with respect to factual issues are reviewed under the manifest weight of the evidence standard. *Tower Automotive v. Illinois Workers' Compensation Comm'n*, 407 Ill. App. 3d 427, 434, 943 N.E.2d 153, 160 (2011). "For a finding of fact to be against the manifest weight of the

evidence, an opposite conclusion must be clearly apparent from the record on appeal." *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315, 901 N.E.2d 1066, 1081 (2009).

¶ 36 "In resolving questions of fact, it is within the province of the Commission to assess the credibility of 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, 928 N.E.2d 474, 482 (2009). Resolution of conflicts in medical testimony is also within the province of the Commission. *Sisbro, Inc. v. Industrial Comm'n*, 207 Ill. 2d 193, 206, 797 N.E.2d 665, 673 (2003). On review, a court "must not disregard or reject permissible inferences drawn by the Commission merely because other inferences might be drawn, nor should a court substitute its judgment for that of the Commission unless the Commission's findings are against the manifest weight of the evidence." *Id.*

¶ 37 The record in the present case includes conflicting medial opinions with respect to the issue of causation. The interpretation of medical testimony is particularly the function of the Commission. *Freeman United Coal Mining Co. v. Industrial Comm'n*, 286 Ill. App. 3d 1098, 1103, 677 N.E.2d 1005, 1008 (1997). "It is also well settled that the determination of how much weight to assign to a particular piece of evidence is a matter for the Commission, and a reviewing court will not reweigh the evidence and substitute its opinion for that of the Commission's." *ABB C-E Services v. Industrial Comm'n*, 316 Ill. App. 3d 745, 750, 737 N.E.2d 682, 686 (2000).

¶ 38 In the present case, the Commission weighed the conflicting medical evidence and assigned weight to the conflicting evidence. Nothing in the record allows us to overturn the Commission's factual finding with respect to causation. The record supports the Commission's finding.

¶ 39 Dr. Weiss testified that if the claimant had injured her neck during the fall at work, she would have experienced pain symptoms within 48 to 72 hours. According to Dr. Weiss, the claimant told him that she did not experience any pain until a few weeks after the fall. In addition, the claimant's emergency room records on the day of the fall do not mention neck pain. Although she testified at the arbitration hearing that she experienced immediate neck pain, the Commission is charged with the task of weighing this conflicting evidence. Based on this evidence, the Commission was entitled to find that the claimant correctly told Dr. Weiss that her symptoms "came on a few weeks later."

¶ 40 Because this finding by the Commission concerning the onset of the claimant's neck symptoms is not against the manifest weight of the evidence, by necessity, its finding on causal connection is also not against the manifest weight of the evidence. The claimant's own medical expert, Dr. Kube, testified that he was unfamiliar with the claimant's medical records with respect to the onset of her symptoms. Nonetheless, he testified that she should have experienced neck symptoms within a week or less after the accident. He testified, "I wouldn't be surprised with a day or two. *If it was a week or two, then it's not related*." (Emphasis added.) He also testified that it would be "less usual" for a person sustaining a neck injury in a fall to wait two months before seeking medical treatment.

¶ 41 The claimant's own expert defeats any assertion that the Commission's finding with respect to causation is against the manifest weight of the evidence. There is no medical testimony in the record to support a finding that neck symptoms manifesting a few weeks after the accident can be causally related to the fall, much less evidence supporting a reversal of the Commission under the manifest weight of the evidence standard. Therefore, we cannot reverse the Commission's decision.

¶ 42 CONCLUSION

¶ 43 For the foregoing reasons, we affirm the judgment of the circuit court that confirmed the Commission's decision.

¶ 44 Affirmed.