2012 IL App (4th) 110414WC-U

Order filed May 11, 2012

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

DON E. DUGAN,	)	Appeal from the Circuit Court
	)	of the 7th Judicial Circuit,
Appellant,	)	Macoupin County, Illinois
	)	
	)	Appeal No. 4-11-0414WC
v.	)	Circuit No. 10-MR-49
	)	
THE ILLINOIS WORKERS' COMPENSATION	)	Honorable
COMMISSION *et al*. (Ameren IP,	)	Kenneth R. Deihl,
Appellee).	)	Judge, Presiding.

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

ORDER

¶ 1 *Held:* The Commission's determination that the claimant's condition of ill-being did not arise out of and in the course of his employment was not against the manifest weight of the evidence.

¶ 2 The claimant, Don Dugan, filed an application for adjustment of claim under the Workers' Compensation Act (the Act) (820 ILCS 305/1 *et seq.* (West 2006)) seeking benefits for injuries to his low back which he claimed to have sustained while working as an employee of the

respondent, Ameren IP (employer). Following a hearing, the arbitrator found that the claimant had failed to establish that his current condition of ill-being was causally related to his employment and denied benefits under the Act. The claimant appealed the arbitrator's decision to the Illinois Workers' Compensation Commission (the Commission). The Commission unanimously affirmed and adopted the arbitrator's decision. The claimant then sought judicial review of the Commission's decision in the circuit court of Macoupin County, which confirmed the Commission's ruling. The claimant then brought this appeal, maintaining that the Commission's finding that his current condition of ill-being was not causally related to his employment was against the manifest weight of the evidence.

¶ 3 FACTS

¶ 4 The claimant testified that he was employed by the employer as a meter changer. He further testified that, on December 16, 2004, he was replacing a meter at a location near Vandalia, Illinois. He completed the change and was walking back to his truck, carrying a ladder, when he stepped in a hole and fell backwards. He testified that he felt immediate pain in his low back, radiating into his left leg. He testified that he was unable to finish his shift. However, he did not testify that he called in to report his injury prior to the end of his shift. The claimant also testified that there were no witnesses to the accident. The claimant further testified that, when he returned to his terminal, he was physically unable to unload his truck, so he sought assistance from a co-worker, Jerad Volkmayer. Claimant testified that he told Volkmayer about what had happened.

¶ 5 Volkmayer's testimony corroborated the claimant's testimony, including the fact that the claimant told him there were no witnesses to the alleged accident. Volkmayer testified that the

claimant was grimacing from pain and was unable to unload his truck. Volkmayer, however, gave no testimony that the claimant told him that he stepped in a hole.

¶ 6 The claimant testified that he reported the work injury to his supervisor, Sean VanSlyke, on December 17, 2004. According to the claimant, VanSlyke told him to seek medical treatment. VanSlyke was not called as a witness by either party.

¶ 7 Jody Jackson, an operations clerk, testified that company records verified that the claimant was working on December 16, 2004, where he said he was working at the time he allegedly incurred an injury.

¶ 8 Dallas Jett, operations manager and VanSlyke's supervisor, testified that, on the date of the alleged injury and the following date, VanSlyke was not available, so any report made by the claimant on those days would have been made to Jett. Jett testified that the claimant reported that he was experiencing difficulty getting in and out of his truck, but there was no mention of stepping in a hole. Jett also testified that he told the claimant to seek medical attention. The claimant testified that he had experienced no problems with his low back or left leg prior to the December 16, 2004, incident. He initially denied, or could not recall, receiving any treatment prior to that date, other than "minor adjustments and maintenance." However, on cross examination, he admitted that he had been receiving chiropractic "maintenance" treatments on a monthly basis for a time prior to the alleged accident. He testified that he could not recall what body parts were involved in the chiropractic treatment, although he claimed to have only experienced pulled muscles and tightness in the neck and shoulders.

¶ 9 The treatment records of the claimant's chiropractor, Dr. Robert Brown, were admitted into evidence. Dr. Brown practiced with Staunton Chiropractic Center. His records indicated the

claimant sought treatment on December 17, 2004. As to how the injury occurred, the treatment notes gave a history of "repetitive motion - getting in and out of truck." Although the claimant testified that he did not fill out the form, he did acknowledge that he signed and dated the form. The form contained no mention of stepping in a hole. The claimant could not explain why the report had no indication that he told Dr. Brown that he stepped in a hole. Dr. Brown's records indicate the claimant received further treatment on December 29, 2004, December 31, 2004, and January 3, 2005. The first history of "patient stepped in a hole" is contained in Dr. Brown's treatment notes for January 5, 2005, the fifth post-accident treatment provided by Dr. Brown.

¶ 10 An MRI, conducted on January 3, 2005, revealed degenerative disc disease at multiple levels and foraminal stenosis at L-5.

¶ 11 Treatment records from Staunton Chiropractic dating back to June 25, 2003, were also admitted into evidence. In the treatment notes from June 25, 2003, the claimant reported daily pain all over, going back 30 years. The treatment notes from June 25, 2003, indicated a possible herniated disc.

¶ 12 The claimant was referred by the employer's claims management service to Dr. Robert Bernardi, who examined the claimant for the first time on January 21, 2005. The claimant gave an initial report of stepping in a hole and experiencing immediate back pain with radiating pain into the left leg. The claimant gave a history of no prior back problems. Dr. Bernardi viewed the January 3, 2005, MRI and diagnosed possible radiculopathy at L-5.

¶ 13 Dr. Bernardi made an entry in his report dated April 26, 2005, in which he noted that further electrodiagnostic tests had failed to reveal any evidence of radiculopathy or neuropathy. Dr. Bernardi suggested that the claimant be referred to a physiatrist for pain management.

¶ 14 On May 12, 2005, the claimant was examined by Dr. James Doll, a physiatrist, pursuant to a referral by Dr. Bernardi. The claimant gave Dr. Doll a history of stepping in a hole, followed by immediate low back pain with pain radiating into the left leg and with progressive pain thereafter. The claimant gave a medical history that did not include any reference to prior chiropractic treatment. Dr. Doll diagnosed lumbar spondylosis. A trigger point injection provided some pain alleviation and permitted the claimant to return to work.

¶ 15 On August 12, 2005, after a course of additional injections and physical therapy, Dr. Doll opined that the claimant had achieved maximum medical improvement (MMI). Dr. Doll's report on that date indicated that the claimant was "very pleased with his overall progress."

¶ 16 On September 20, 2005, the claimant sought further consultation with Dr. Doll, indicating that he had ongoing complaints of pain and was resuming treatment with his chiropractor, Dr. Brown. Dr. Doll's notes indicated that he remained of the opinion that the claimant was at MMI. The claimant did not seek treatment from Dr. Brown until February 4, 2006.

¶ 17 The record next contains a referral to Dr. Joseph Williams, a spinal surgeon. Dr. Williams initially examined the claimant on August 1, 2007. His treatment notes indicated a history given by the claimant of low back problems beginning on December 16, 2004, with no reference to prior chiropractic treatment. On January 17, 2008, following diagnostic testing, Dr. Williams performed disc fusion surgery at L4-L5. Following postoperative physical therapy, the claimant was released by Dr. Williams on June 17, 2008, to return to work with a 50-pound weight lifting restriction. On August 26, 2008, the claimant was released to full duty without restrictions.

¶ 18 The claimant introduced the deposition testimony of Dr. Williams into evidence. Initially, Dr. Williams opined that the work accident as described to him could have resulted in an aggravation of the claimant's underlying degenerative disc condition. On cross-examination, however, Dr. Williams noted that he had not been provided with a complete and accurate medical history. He testified that he was unaware of much of the claimant's prior chiropractic history. He admitted that not knowing when the claimant's degenerative disc condition first became symptomatic negatively impacted his causation opinion.

¶ 19 The claimant also introduced the deposition testimony of Dr. Matthew Gornet, whom the claimant testified he had heard about through a co-worker. Dr. Gornet initially examined the claimant on February 19, 2009, at which time the claimant gave a history of experiencing low back pain with pain radiating into his left leg immediately after stepping in a hole on December 16, 2004. Dr. Gornet's records have no indication that the claimant reported any pain or chiropractic treatment, other than routine maintenance, prior to December 16, 2004. Dr. Gornet opined "based on at least the information I have provided to me, I believe his current symptoms are causally connected to his work related injury of December of 2004." Dr. Gornet explained that his opinion was based upon "minimal symptoms in the past, with only mild chiropractic care prior to the accident." On cross-examination, Dr. Gornet admitted that he did not recall reviewing any records from Staunton Chiropractic prior to rendering his opinion, nor did he recall any indication that the claimant had been receiving chiropractic treatment for pain, including back pain, since 2003. He was also unaware that the claimant initially reported the pain was caused by "getting in and out of his truck" with no mention of stepping in a hole. Dr. Gornet admitted that his causation opinion was valid only if he had received an accurate history.

¶ 20 With regard to the opinions of Drs. Williams and Gornet, Dr. Doll opined that an incomplete and inaccurate history rendered their opinions as to causation suspect.

¶ 21 The arbitrator found that the claimant's allegation that he had no problems with his back prior to December 16, 2004, was not credible. She also found that the claimant's testimony of a specific injury sustained while stepping in a hole was inconsistent with his initial reports to Jett and to Dr. Brown. The arbitrator also determined that the medical opinions of Drs. Williams and Gornet were based upon incomplete and inaccurate histories. Based upon these findings, the arbitrator found that the claimant had failed to establish that he sustained accidental injuries arising out of and in the course of his employment. The Commission affirmed and adopted the decision of the arbitrator. The circuit court confirmed that Commission's decision, finding that it was not against the manifest weight of the evidence.

¶ 22 ANALYSIS

¶ 23 To obtain compensation under the Act, a claimant must prove that some act or phase of his employment was a causative factor in his ensuing injuries. *Land and Lakes Co. v. Industrial Comm'n*, 359 Ill. App. 3d 582, 592 (2005). The claimant has the burden of showing, by a preponderance of credible evidence, that his current condition of ill-being arose out of and in the course of his employment, which requires a showing of a causal connection between the claimant's current condition and his employment. *Horvath v. Industrial Comm'n*, 96 Ill. 2d 349, 356 (1983). In resolving disputed issues of fact, including issues related to causation, it is the Commission's province to assess the credibility of witnesses, draw reasonable inferences from the evidence, determine what weight to give testimony, and resolve conflicts in the evidence, particularly medical opinion evidence. *Hosteny v. Illinois Workers' Compensation Comm'n*, 397

Ill. App. 3d 665, 675 (2009); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041 (1999). We will overturn the Commission's causation finding only when it is against the manifest weight of the evidence. A factual finding is against the manifest weight of the evidence if the opposite conclusion is "clearly apparent." *Swartz v. Illinois Industrial Comm'n*, 359 Ill. App. 3d 1083, 1086 (2005). The test is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other tribunal might reach an opposite conclusion. *Pietrzak v. Industrial Comm'n*, 329 Ill. App. 3d 828, 833 (2002). "A reviewing court will not reweigh the evidence, or reject reasonable inferences drawn from it by the Commission, simply because other reasonable inferences could have been drawn." *Durand v. Industrial Comm'n*, 224 Ill. 2d 53, 64 (2006).

¶ 24 Applying these standards, we cannot say that the Commission's conclusion that the claimant's low back pain was not causally related to a December 16, 2004, work accident was against the manifest weight of the evidence. As in *Horvath*, there is evidence here that the claimant gave conflicting versions of the accident. While he claims that he gave an immediate history of "stepping in a hole," there is no evidence, other than his own testimony, that he told anyone about stepping in a hole until his fifth treatment with Dr. Brown on January 5, 2005. Also, the testimony of Jerad Volkmeyer, the claimant's witness and the first person to whom he had an opportunity to tell that he "stepped in a hole," did not testify to any such statement by the claimant. In addition, the Commission adopted the arbitrator's finding that the claimant's testimony was inconsistent with Dr. Brown's records as to how the injury occurred. Dr. Brown's initial consultation following the alleged accident indicated that the claimant made no mention of stepping in a hole and instead reported only "repetitive motion - getting in and out of [the] truck."

Moreover, the arbitrator noted that the claimant's testimony was inconsistent with Jett's testimony that the claimant made no mention of stepping in a hole when he reported his injury.

¶ 25 Regarding Jett's testimony, the claimant maintains that the Commission erred in giving any consideration to his testimony since the issue of timely notice was not disputed. We find this argument unconvincing. The Commission considered Jett's testimony regarding the claimant's report as to how his injury occurred as being relevant to the question of causation, not timely notice. The Commission found that the statement made by the claimant to Jett regarding how his injury allegedly occurred was inconsistent with his report to Dr. Brown. It is well within the purview of the Commission to weigh evidence regarding credibility, and such findings will not be overturned by this court unless they are against the manifest weight of the evidence. *Goldsamt v. Industrial Comm'n*, 93 Ill. 2d 115, 121 (1982). Here, the Commission's comparison of the alleged inconsistencies between the claimant's report to Jett and to Dr. Brown supported a reasonable inference that the claimant's description of the accident was not credible.

¶ 26 The claimant also maintains that the Commission erred in relying upon the fact that he had prior chiropractic treatment. The claimant points out that "it is axiomatic that employers take their employees as they find them." *Sisbro v. Industrial Comm'n*, 207 Ill. 2d 193, 205 (2003). It is certainly true that "even though an employee has a preexisting condition which may make him more vulnerable to injury, recovery for an accidental injury will not be denied as long as it can be shown that the employment was also a causative factor. " *Id*. However, in the instant matter, the Commission did not rely upon the prior chiropractic treatment history to find that the claimant's current condition was not compensable. Rather, it relied upon the prior history to support its conclusion that the claimant was not credible. As the arbitrator noted, "[claimant] testified that

he had no problems with his low back or left leg prior to the claimed injury on [December 16, 2004]." The arbitrator then contrasted this statement with the history of chiropractic treatments received from Dr. Brown and the Staunton Chiropractic Center and concluded "[claimant's] allegation that he had no problems with his low back before December 16, 2004, is not credible."

¶ 27 While it is true that a claimant may establish that he is entitled to compensation where his employment aggravates a preexisting condition, here, the claimant himself appeared to deny that he had any problems with his low back prior to December 16, 2004. He did not present his claim as an aggravation of a preexisting condition. The Commission's consideration of the claimant's prior chiropractic treatment as further evidence of his lack of credibility, therefore, was not against the manifest weight of the evidence.

¶ 28 The claimant further maintains that the Commission erred in discounting the medical opinion testimony of Drs. Williams and Gornet. We disagree. The Commission is uniquely situated to weigh competing medical opinion testimony and resolve any conflicts in such evidence. *Hosteny*, 397 Ill. App. 3d at 675. Here, both Drs. Williams and Gornet admitted that a complete and accurate prior medical history was essential to the validity of their medical opinion testimony as to causation. They also acknowledge that they were not aware of the claimant's prior treatments for low back pain. Moreover, Dr. Doll's medical opinion testimony as to causation, which differed from Drs. Williams and Gornet, was based upon a complete medical treatment history. The Commission's decision to accept Dr. Doll's opinion and reject the opinions of Drs. Williams and Gornet, based upon an incomplete medical history, was not against the manifest weight of the evidence.

¶ 29 Finally, the claimant argues that the Commission's decision not to award TTD benefits and medical expenses was against the manifest weight of the evidence. Because we uphold the Commission's causation finding, we also uphold the Commission's denial of TTD benefits and medical expenses.

¶ 30 CONCLUSION

¶ 31 For the foregoing reasons, we affirm the judgment of the Macoupin County circuit court, which confirmed the Commission’s decision.

¶ 32 Affirmed.