2012 Il App (4th) 110683WC-U

Workers' Compensation
Commission Division
Filed: September 18, 2012

No. 4-11-0683WC

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

WAL-MART ASSOCIATES, INC.,	)	APPEAL FROM THE CIRCUIT
	)	COURT OF VERMILION COUNTY
Appellant,	)	
	)	
v.	)	No. 10 MR 108
	)	
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, et al., (TERRI JONES,	)	HONORABLE
	)	MARK S. GOODWIN,
Appellee).	)	JUDGE PRESIDING.

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

ORDER

¶ 1 Held: Neither the Illinois Workers' Compensation Commission's determination that the current condition of ill-being of the claimant's left leg is causally related to her employment injury, nor its award of an increase in permanent partial disability benefits and additional post-arbitration medical benefits as modified by the circuit court is against the manifest weight of the evidence.

¶ 2 Wal-Mart Associates, Inc. (Wal-Mart) appeals from an order of the Circuit Court of Vermilion County which confirmed a decision of the Illinois Workers' Compensation Commission (Commission) awarding the claimant, Terri Jones, an increase in permanent partial disability (PPD) benefits pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 et

seq. (West 2008)) and which awarded the claimant additional post-arbitration medical expenses. For the reasons which follow, we affirm the judgment of the circuit court.

¶ 3 The following factual recitation is taken from the evidence presented at an arbitration hearing conducted on April 17, 2006, and at a section 19(h) (820 ILCS 305/19(h) (West 2010)) hearing conducted by the Commission on December 2, 2009.

¶ 4 On September 19, 2003, the claimant was employed by Wal-Mart and was performing her job duties when she fell off of a ladder from a height of five feet and landed on her left knee. The claimant was subsequently treated by Dr. K. Donald Shelbourne, who diagnosed a severe patellar tendon contusion in her left knee and prescribed conservative treatment, consisting of physical therapy and home exercises. The claimant completed that treatment and was released from Dr. Shelbourne's care, without restrictions, on September 15, 2005. At that time, Dr. Shelbourne told her that she could not "do anything to damage her knee, but if she over does activity it may be prone to get sore." Prior to her medical release in September 2005, the claimant had last received treatment on April 14, 2004.

¶ 5 The claimant filed an application for adjustment of claim pursuant to the Act, seeking benefits for the injury she sustained as a result of the September 2003 employment accident. At the arbitration hearing conducted on April 17, 2006, the claimant testified that her work-related injury limited her ability to run, play basketball, climb ladders, and play with her children. She also testified that she experienced swelling in her knee and had a limp as a result of the injury. She used ibuprofen and ice to alleviate her condition.

¶ 6 The medical records presented at the arbitration hearing reflect that the claimant underwent x-rays in November 2003 and September 2005, which she was being treated by Dr. Shelbourne. She also had an MRI of her left-knee on October 3, 2003, which indicated patellofemoral osteoarthritis but no fractures or meniscal tear.

¶ 7 Based on the evidence presented at the April 17, 2006 hearing, the arbitrator found that

the claimant was entitled to PPD benefits for 12.5% loss of use of her left leg, as well as $565 for reasonable and necessary medical expenses. Neither party sought review of the arbitrator's decision.

¶ 8 On May 29, 2008, the claimant timely filed a petition pursuant to section 19(h) of the Act, seeking an increase in her PPD award and further reimbursement for post-arbitration medical expenses. In particular, the claimant alleged that she had experienced "increased pain in her leg," had undergone additional medical treatment for the current condition in her leg, and would require further treatment and care for that condition. The Commission conducted a hearing on the petition, at which the claimant was the only witness.

¶ 9 At the section 19(h) hearing before the Commission on December 2, 2009, the claimant testified that she was employed as a produce manager for an IGA grocery store, which was the same job that she held at the time of the prior arbitration hearing in April 2006. The claimant also stated that her left knee had been deteriorating since the arbitration hearing. She testified that she had to take more frequent breaks during work because of the pain in her knee, which is "restless at night." The claimant further testified that she experienced more swelling in her knee and had to walk less, compared her condition and ability at the time of the initial arbitration hearing. In addition, she stated that the limp she had developed as a result of the original injury had gotten progressively worse and that her knee occasionally would "give out."

¶ 10 The claimant testified that she began treating with Dr. Paul F. Plattner, an orthopedic specialist, in June 2008. According to the claimant, the physician’s assistant who works with Dr. Plattner advised that there was "a big bruise in [her left knee] that was never going to go away," and that the condition of her knee would deteriorate over time. The claimant testified that Dr. Plattner administered cortisone injections in her left knee once every three months because of the increased pain. She explained that it takes three or four days for the injections to become effective and that they last approximately two and one-half months, so that the level of her pain

begins to increase about two weeks prior to the next injection. The claimant also stated that her left-knee pain is worse with high humidity and when it rains or snows, and she currently takes Tramadol and Hydrocodone, as prescribed by Dr. Debora L. O'Brien, her family physician, to help relieve the pain. She testified that the level of her pain at the time of the Commission hearing was between five and seven, on a scale of one to ten, and the cortisone shots reduced that level to about three. The claimant further testified that, at the time of the 2006 arbitration hearing, her pain level was about a three or four, out of ten, and she was not taking any pain medication or injections. She also stated that she did not seek any treatment for her left knee between September 15, 2005, the date of her release from Dr. Shelbourne's care, and June 2, 2008.

¶ 11 The claimant acknowledged that she had never been given any work restrictions as a result of her condition after the April 2006 arbitration hearing. The claimant also acknowledged that she had been involved in an automobile accident in May 2005, but she testified that the accident did not affect the condition of her left knee.

¶ 12 The claimant testified that her job activities as a produce manager include stocking, filling orders, operating the cash register, assisting customers, and working with the computer. She also stated that she does not have to bend down to stock items in the produce case, which is at waist level, and she does not push the pallets that contain merchandise. The claimant testified that she is able to do some housework, including the laundry, but that her children push the laundry basket for her. In addition, she does not load or unload the dishwasher; her fiancé performs these tasks. She does, however, do some dusting and cleaning, to the extent that she is able to tolerate it.

¶ 13 At the section 19(h) hearing, the claimant introduced medical records reflecting the following, On June 2, 2008, she sought treatment for the chronic and increased pain in her left knee, which resulted from the prior fall from a ladder. The x-ray performed on that date was

negative and showed no significant degenerative joint disease. Upon examination, Dr. O'Brien found some crepitus with extension and flexion of the left knee and prescribed Tramadol for the pain.

¶ 14 The claimant was examined by Dr. Plattner on June 11, 2008, and reported that her knee pain, resulting from a previous fall from a ladder, is exacerbated by rainy weather. Dr. Plattner found that the claimant's knee was stable, with no effusion, erythema, or edema; the sensation and pulses were intact; and the range of motion was functional. He noted, however, that she experienced pain with forced flexion of the left knee and with McMurray testing, as well as pain at the joint line. Dr. Plattner injected the left knee with kenalog and a local anesthetic. Thereafter, the claimant periodically returned to Dr. Plattner for the pain in her left knee and received injections on October 13, 2008, January 22, 2009, and on April 23, 2009.

¶ 15 In April 2009, the claimant reported that the pain travels up from her left knee to her hip when she walks. On June 10, 2009, Dr. Plattner found that the claimant was tender to palpation along the knee diffusely, and he ordered an MRI to rule out any internal derangement.

¶ 16 On June 22, 2009, Dr. Plattner evaluated the results of the MRI and determined that it showed a "little contusion" on her left knee. The claimant's knee was still tender to palpate, and she again reported that the pain sometimes travels up her leg to the anterior thigh region. However, because it was too soon to administer another injection, Dr. Plattner recommended that the claimant participate in physical therapy. The claimant received a knee injection four weeks later on July 22, 2009. On October 16, 2009, Dr. Plattner administered another injection and also made an initial diagnosis of degenerative joint disease of the left knee.

¶ 17 Upon consideration of the evidence presented at the section 19(h) hearing, the Commission, with one commissioner dissenting, found that the plaintiff's testimony was credible and established a progressive deterioration of her original, work-related condition. Consequently, the Commission found that the current condition of ill-being in the claimant's left

leg is causally connected to her employment accident in September 2003 and that she was entitled to an additional 5% in PPD benefits and $7,627 for post-arbitration medical expenses.

¶ 18 Wal-Mart appealed to the circuit court of Vermilion County, which confirmed the Commission's award of additional PPD, but modified the medical-expense award by reducing it to $1,752, which was the amount of post-arbitration medical expenses requested by the claimant. This appeal followed.

¶ 19 Initially, we note that, in its brief on appeal, Wal-Mart addresses its arguments to the circuit court's decision. This court, however, reviews the Commission's decision, not that of the circuit court. See Boom Town Saloon, Inc. v. City of Chicago, 384 Ill. App. 3d 27, 32, 892 N.E.2d 1112 (2008). Yet, a careful examination of the arguments raised in Wal-Mart's brief reveals that it is actually challenging the Commission's decision to award the claimant additional PPD benefits and medical expenses, which it contends is contrary to the law and against manifest weight of the evidence. We have considered Wal-Mart's arguments as if they were directed to the decision of the Commission.

¶ 20 Wal-Mart argues that the claimant failed to prove that the current condition of ill-being in her left leg is causally related to her original employment injury in September 2003. In support of this argument, Wal-Mart cites the fact that the claimant did not present the testimony of her treating physicians. Wal-Mart also claims that the Commission's decision was premised on the claimant's subjective testimony, which it asserts is insufficient to justify an award under section 19(h). Wal-Mart places significant reliance on Dr. Shelbourne's September 2005 statement that the claimant could not "do anything to damage her knee, but if she over does activity it may be prone to get sore." We do not believe that any of these considerations warrants reversal of the Commission's decision in this case.

¶ 21 The purpose of a proceeding under section 19(h) of the Act is to determine whether a claimant's disability has "recurred, increased, diminished or ended" since the time of the

Commission's original decision. 820 ILCS 305/19(h) (West 2010); Howard v. Industrial Comm'n, 89 Ill.2d 428, 429, 433 N.E.2d 657 (1982); Gay v. Industrial Comm'n, 178 Ill. App. 3d 129, 132, 532 N.E.2d 1149 (1989). To warrant a modification in benefits, the change in the claimant's disability must be material. Gay, 178 Ill. App. 3d at 132. In reviewing a section 19(h) petition, the evidence presented in the original proceeding must be considered to determine whether the claimant has sustained a material change in her condition since the time of the initial award. Howard, 89 Ill. 2d at 429-30; Gay, 178 Ill. App. 3d at 132. Whether there has been a material alteration in the claimant's disability is an issue of fact to be resolved by the Commission. Howard, 89 Ill. 2d at 430; Gay, 178 Ill. App. 3d at 132. In addition, the issue of whether a causal relationship exists between a claimant's condition of ill-being and her employment is a question of fact to be resolved by the Commission. Certi-Serve, Inc. v. Industrial Comm'n, 101 Ill. 2d 236, 244, 461 N.E.2d 954 (1984). Neither of the factual determinations will be overturned on review unless they are against the manifest weight of the evidence. Franklin v. Industrial Comm'n, 211 Ill. 2d 272, 279, 811 N.E.2d 684 (2004); Howard, 89 Ill. 2d at 430; Gay, 178 Ill. App. 3d at 132. Even in cases where the facts are undisputed, the manifest-weight standard applies if more than one reasonable inference might be drawn from the established facts. Orsini v. Industrial Comm’n, 117 Ill. 2d 38, 44, 509 N.E.2d 1005 (1987); Federal Marine Terminals, Inc. v. Illinois Workers’ Compensation Comm’n, 371 Ill. App. 3d 1117, 1127, 864 N.E.2d 838, (2007). A finding is contrary to the manifest weight of the evidence where the opposite conclusion is clearly apparent. Teska v. Industrial Comm'n, 266 Ill. App. 3d 740, 742, 640 N.E.2d 1 (1994).

¶ 22 Medical testimony is not essential to support the conclusion that an accident caused a claimant's condition of ill-being. International Harvester v. Industrial Comm'n, 93 Ill. 2d 59, 63-64, 442 N.E.2d 908 (1982); University of Illinois v. Industrial Comm'n, 365 Ill. App. 3d 906, 912, 851 N.E.2d 72 (2006). Circumstantial evidence can be sufficient to prove a causal nexus

between an accident and the claimant's injury. University of Illinois, 365 Ill. App. 3d at 912. Also, a claimant's testimony standing alone may be sufficient to support an award of benefits under the Act. Seiber v. Industrial Comm'n, 82 Ill. 2d 87, 97, 411 N.E.2d 249 (1980); University of Illinois, 365 Ill. App. 3d at 912. It is the function of the Commission judge the credibility of the witnesses and to draw appropriate inferences from their testimony, and the Commission's resolution of such issues will not be disturbed on appeal unless they are against the manifest weight of the evidence. Sisbro, Inc. v. Industrial Comm'n, 207 Ill. 2d 193, 206-07, 797 N.E.2d 665 (2003).

¶ 23 In the present case, the claimant testified regarding the progression of her left-leg condition since the time of the initial arbitration hearing. She also denied that she had suffered any intervening accidents or injuries that affected her left knee. The Commission found her testimony credible. In addition, the Commission considered both the post-arbitration automobile accident and the suspension of medical treatment from September 2005 to June 2008. In granting the claimant an additional 5% in PPD benefits and post-arbitration medical expenses, the Commission implicitly found that neither the car accident nor the interruption in treatment were sufficient to sever the causal connection between the claimant's original employment injury in September 2003 and her condition of ill-being at the time of the section 19(h) hearing. Moreover, the medical records presented at the hearings document a consistent course of treatment relating to the condition of the claimant's left knee, which was injured as a result of the employment accident in September 2003. The claimant testified that Dr. Plattner's physician's assistant advised that she had a bruise in her left knee that would not heal, and this diagnosis was confirmed by Dr. Plattner's evaluation of the MRI taken in June 2009. Also, the diagnosis of a left-knee contusion is consistent with the diagnosis previously rendered for the claimant's work-related injury

¶ 24 Nevertheless, Wal-Mart asserts that the claimant's post-arbitration medical treatment was

for degenerative joint disease; a bone condition, which is not the same condition or diagnosis for which the claimant had been treated prior to the arbitration hearing. This assertion is without merit because it is contradicted by the record. The record affirmatively demonstrates that the claimant had no significant degenerative joint disease as of June 2008, and she was not diagnosed with this condition until October 16, 2009, the final date of medical treatment reflected in the evidence presented at the section 19(h) proceeding. Thus, the post-arbitration medical treatment rendered between June 2008 and October 2009, which included the prescription of pain medications and multiple injections in her left knee, was not attributable to degenerative joint disease.

¶ 25 In light of the fact that the Commission's finding of a causal connection between the claimant's current condition of ill-being in her left leg is sufficiently supported by the credible testimony of the claimant and the records of her post-arbitration medical treatment, we cannot say that the Commission's causation determination is against the manifest weight of the evidence.

¶ 26 We next consider whether the Commission erred in awarding the claimant an additional 5% in PPD benefits and post-arbitration medical expenses. As noted above, whether the claimant has suffered a material change in her disability is a question of fact to be resolved by the Commission, as is the determination of the extent of the disability and the necessity and reasonableness of medical charges. See Howard, 89 Ill. 2d at 430; Gay, 178 Ill. App. 3d at 132; see also Westin Hotel v. Industrial Comm'n, 372 Ill. App. 3d 527, 546, 865 N.E.2d 342 (2007); Ditola v. Industrial Comm'n, 216 Ill. App. 3d 531, 536, 576 N.E.2d 379 (1991). Consequently, the Commission's resolution of these issues will not be reversed unless they are against the manifest weight of the evidence. See Howard, 89 Ill. 2d at 430; Westin Hotel, 372 Ill. App. 3d at 546; Gay, 178 Ill. App. 3d at 132. Also, the testimony of the claimant as to her physical condition is competent to sustain an award under section 19(h). A.O. Smith Corp. v. Industrial

Comm'n, 51 Ill. 2d 533, 537, 283 N.E.2d 875 (1972).

¶ 27 In this case, the Commission specifically noted that the claimant's limp and knee swelling had become progressively worse since the date of the arbitration hearing. In addition, she had experienced the new symptom of having her knee "collapse" or "give out" while walking. The level of her pain, which was about a three or four at the time of the arbitration, had increased and regularly was between five and seven, on a scale of one to ten. As a result, the claimant was required to begin taking multiple pain medications and undergo quarterly injections in her knee in order to manage her pain, where she previously needed no pain-management regimen. The claimant's testimony with regard to the above circumstances was corroborated by the records of her medical treatment, which documented her complaints and symptoms.

¶ 28 The Commission also considered the undisputed evidence that the claimant's current condition of ill-being impacted her daily activities. She required assistance in transporting the laundry basket, and she was unable to load and unload the dishwasher. She also could no longer do yard work, and the deterioration of her knee condition limited her ability to play with her children.

¶ 29 Although Wal-Mart characterizes the claimant's testimony regarding her subjective complaints as "grossly exaggerated" and not credible, the Commission is charged with the task of post-arbitration medical expenses deciding the credibility of the witnesses. See Sisbro, Inc., 207 Ill. 2d at 207. Here, the Commission found that the claimant's testimony was credible, and there is no indication in the medical records that she had magnified her symptoms.

¶ 30 The extent of disability is a question of fact to be determined by the Commission. Oscar Mayer & Co. v. Industrial Comm'n, 79 Ill. 2d 254, 256, 402 N.E.2d 607 (1980). The Commission, in this case, concluded that the new limitation on the claimant's functional capacity constitutes a material change in her disability, which justifies an increase of 5% in PPD benefits. We cannot say that its determination in this regard is against the manifest weight of the

evidence.

¶ 31 Finally, as noted earlier, the Commission awarded the claimant an additional $7,627 for post-arbitration medical expenses. However on review, the circuit court modified the decision and reduced the additional medical expense award to $1,752.

¶ 32 Wal-Mart never addressed the propriety of the Commission's award of post-arbitration medical expenses in its brief before this court. Therefore, the issue is deemed waived. Meyers v. Kissner,149 Ill. 2d 1, 8, 594 N.E.2d 336 (1992). As for the circuit court's modification of the additional medical expense award, we note that the claimant never raised the issue in a cross-appeal and in her brief specifically asked us to affirm the modification.

¶ 33 Based upon the foregoing analysis, we affirm the judgment of the circuit court, which confirmed the decision of the Commission as modified.

¶ 34 Affirmed.