2013 IL App (4th) 120257-U

Workers' Compensation
Commission Division
Filed: July 8, 2013

No. 4-12-0257WC

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

DAVID EDWARD CURRAN,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Coles County
	)	
v.	)	
	)	No. 11 MR 139
ILLINOIS WORKERS' COMPENSATION	)	
COMMISSION, *et al*.,	)	
(Coles County Sanitation and Recycling,	)	
Inc.,	)	Honorable
	)	Mitchell K. Shick,
Appellee).	)	Judge Presiding

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

ORDER

¶ 1 *Held*: The Illinois Workers' Compensation Commission's finding, that the claimant failed to establish a causal connection between his injury and a workplace accident, is not against the manifest weight of the evidence.

¶ 2 The claimant, David Edward Curran, appeals from an order of the circuit court of Coles County confirming a decision of the Illinois Workers' Compensation Commission (Commission)

denying him benefits under the Workers' Compensation Act (Act) (820 ILCS 305/1 *et seq*. (West 2006)), for a right-shoulder injury he allegedly sustained while in the employ of Coles County Sanitation and Recycling, Inc. (CCSR) on September 22, 2003. On appeal, the claimant argues that the Commission's finding, that his shoulder condition is not causally related to his workplace accident, is against the manifest weight of the evidence. For the reasons that follow, we affirm the circuit court's judgment.

¶ 3 The following factual recitation is taken from the evidence presented at the arbitration hearing conducted on August 26, 2010.

¶ 4 The claimant testified that he was employed by CCSR between October 1992 and December 2005. On September 22, 2003, the claimant operated CCSR's garbage trucks along commercial and residential routes, which involved hooking chains onto garbage containers and moving a lever to bring the containers into the truck. The garbage was then crushed by the truck. According to the claimant, on that day, he and Scott Keller were called by Mark McGrath, operator of CCSR, to assist in moving a baby grand piano out of a residence. The claimant testified that, while he was moving the piano out of the house, his "back popped and [his] shoulder twinged." He told McGrath that his back had popped. The piano was too large for the truck to crush it, and its weight broke the truck's "power take-off" (PTO) mechanism. The claimant testified that, when he, Keller, and Robert Howell attempted to fix the U-joint on the PTO the following day, pain in his back and shoulder left him unable to use a hammer.

¶ 5 The claimant testified that, on September 24, he swung a hammer and experienced "excruciating" pain in his right shoulder. According to the claimant, the pain was the same pain that

he experienced on September 22. The claimant testified that he called the office secretary, who set up an appointment for him with Dr. Stephen Hutti on that same day. He told the secretary, Sandy King, that he had injured his back. He said that he did not mention his shoulder because his back hurt more than the shoulder at the time.

¶ 6 On September 24, Dr. Hutti noted that the claimant complained of low back pain after lifting a baby grand piano. There is no mention of shoulder pain in Dr. Hutti's report. He diagnosed the claimant with muscle spasm from T9 to L5 and noted that the claimant required only one treatment. The claimant testified that he felt relief from the pain in both his back and his shoulder after Dr. Hutti adjusted his back, but he said that the shoulder pain returned and increasingly worsened over time. He testified that the pain was intense, bothering him even when he was not at work, and that it disrupted his sleep. Although the claimant testified that Dr. Hutti told him to return if the pain persisted, he sought no further treatment from Dr. Hutti or any other physician through his employer or on his own for approximately 18 months. The claimant continued to work after the September 22 injury. His duties continued to be the same: driving the truck to containers and assisting in hooking the containers, if needed.

¶ 7 On March 4, 2005, the claimant saw Dr. C.E. Whalen for his shoulder pain. Dr. Whalen noted that the claimant was seeking treatment for an alcohol problem and shoulder pain. According to Dr. Whalen's treatment note, the claimant reported that he had hurt his shoulder "pounding out some kind of U-joint" a couple of years ago and that it had gotten better but recently had "gotten a lot worse." Dr. Whalen's treatment note mentions nothing about the claimant's moving a grand piano. In his testimony, the claimant admitted that he developed a habit of drinking in the evening

to dull the pain so he could sleep. He denied that he went to see Dr. Whalen because his drinking was problematic.

¶ 8 On March 7, 2005, the claimant sought emergency room treatment for his shoulder pain. During his testimony, he remembered telling emergency room personnel that he had previously hurt his back. According to the emergency room notes, the claimant said that his shoulder had been hurting for two weeks and that he had "no known injury." The emergency room notes state further that the claimant said that he might have injured his shoulder two years prior and that he "had some pain for a short while but has not had any since." The report states that the claimant had no weakness or loss of function or sensation, but experienced extreme pain during movement. The report notes that the claimant worked on a garbage truck and lifted "heavy things all the time, so it [was] very possible that he could have injured it that way." In his testimony, the claimant admitted that he told emergency room personnel that he had not suffered any recent injuries to the shoulder.

¶ 9 On March 10, 2005, the claimant saw Dr. James Kohlmann. The claimant testified that he told Dr. Kohlmann that his shoulder pain had been severe for about a year. He denied that he drank alcohol the day he saw Dr. Kohlmann, and he denied that Dr. Kohlmann asked him if he injured himself while intoxicated. Dr. Kohlmann's March 10 treatment note indicates that the claimant stated that he had had severe shoulder pain for the past two weeks, but that he had had shoulder pain for the past year. Dr. Kohlmann reported that the claimant explained that he drove a garbage truck but that he did not actually lift the trash containers and only used his right hand to operate a stick shift. The March 10 treatment note further indicates that the claimant did not have a "history of injury that he [could] think of." Dr. Kohlmann reported that the claimant admitted drinking more

than a 12-pack of beer per week and some hard liquor and that it was apparent that he drank the night before the office visit. Dr. Kohlmann also reported that the claimant had total atrophy of the infraspinatus muscle in the right shoulder and major weakness of external rotation. According to Dr. Kohlmann's notes, the claimant had bruising over his proximal lateral arm, near the deltoid, but the claimant could not tell Dr. Kohlmann what had caused that bruising.

¶ 10 On March 31, 2005, Dr. Kohlmann reported that the claimant had an MRI, which showed that he had a "very large full thickness rotator cuff tear," which was so large it was beyond repair. Dr. Kohlmann noted that he asked further about the claimant's alcohol use and shoulder symptoms and that the claimant stated he quit drinking six months ago but had had shoulder symptoms for longer than that. Dr. Kohlmann opined in his notes that it might be possible that the claimant's drinking masked symptoms or that he was injured while intoxicated.

¶ 11 Next, the claimant saw Dr. Spaniol[1], upon referral from Dr. Kohlmann. Dr. Spaniol's December 15, 2005, treatment note states that the claimant complained of shoulder pain since about July 2004, when he hurt his shoulder at work "pushing a heavy container or throwing a heavy trash can in the back of the truck." In his testimony, the claimant denied telling Dr. Spaniol that his shoulder pain began in July 2004. Dr. Spaniol's January 13, 2006, treatment note indicates that the claimant was seen for follow-up and had had shoulder "problems going back to September 22 or 23 of 2003 when he injured his right shoulder lifting a baby grand piano working for CCSR."

¶ 12 The claimant first saw Dr. Gaylin Lack in January 2006. The claimant testified that he told Dr. Lack that he injured himself moving a piano. In a January 4, 2006, treatment note, Dr. Lack

[1] No first name can be found in the record for Dr. Spaniol.

wrote that the claimant had had shoulder symptoms since late 2003, when he "began seeing a chiropractor on a regular basis after he had an injury to his back and shoulder subsequent to pushing on a piano." Dr. Lack noted that, "last August," the claimant's symptoms became severe enough to compel him to seek emergency room treatment.

¶ 13 On July 10, 2006, the claimant saw Dr. Mark Emenecker. The claimant testified that he told Dr. Emenecker that he hurt himself moving a piano; he did not recall if he mentioned the U-joint. In his treatment notes for that visit, Dr. Emenecker wrote that the claimant felt that his shoulder was "hurt at work but no specific injury was noted." The claimant saw Dr. Emenecker again on September 12, 2006, and several times in 2007 for pain management follow-up care and for treatment of other disorders.

¶ 14 In January 2008, the claimant began seeing Dr. James McKechnie upon Dr. Emenecker's referral. On January 22, 2008, Dr. McKechnie reported that the claimant was "first hurt when he was moving a piano with his boss in August of 2003." The claimant told him that he strained his back and shoulder, but only his back improved. Dr. McKechnie reported that the claimant's pain gradually progressed, but he kept working despite the pain. According to Dr. McKechnie's report, with Dr. Lack's assistance, the claimant was able to get workers' compensation approval for surgery.

¶ 15 Dr. McKechnie ordered a second MRI, which the claimant had undergone on February 8, 2008. On May 14, 2008, Dr. McKechnie performed a right-rotator cuff surgery on the claimant. Several times following the surgery, the claimant saw Dr. McKechnie, who noted that the claimant would likely require a repeat rotator cuff surgery.

¶ 16 The claimant testified that he was laid off from his position in December 2005 because

CCSR was downsizing. He denied that he was fired based on CCSR's inability to acquire auto insurance because of his adverse driving history. The claimant also denied ever showing up to work in a sling in March 2005. He further denied telling a coworker, Marty Roberts, that he was in a bar fight and was thrown to the ground on his right shoulder.

¶ 17 Julie Curran, the claimant's wife, testified that after the September 22, 2003, accident, the claimant would intermittently complain of shoulder pain that became excruciating about two months prior to his visit with Dr. Whalen. She said that the claimant would have two to three drinks at night to help the pain and to help sleep. Curran denied that the claimant ever went to any bars, testifying that "[h]e came home every night."

¶ 18 Mark McGrath, operator of CCSR, testified that the U-joint refers to the area between the PTO shaft and the PTO mechanism. McGrath has repaired the U-joint on the company's trucks, using a Cobble's Welding to make the repairs. McGrath denied that the claimant would have had to repair any broken U-joints. He also denied ever calling the claimant to assist in picking up a baby grand piano. He denied that the claimant ever informed him that he was injured on September 22, 2003.

¶ 19 Sandy King, an office secretary for CCSR, testified that she never received a call from the claimant in September 2003 reporting an injury or requesting a referral for a doctor. King testified that she received a bill from Dr. Hutti for a treatment to the claimant's back, which she submitted to be paid. The bill did not mention any shoulder injury. King denied that the claimant reported having injured his back while moving a baby grand piano or while repairing a U-joint. She testified that she did not receive notice of the claimant's injury until she received his workers' compensation claim,

filed in 2006.

¶ 20 Todd Vantassel testified that he, not Scott Keller, was on the truck with the claimant on September 22, 2003. He estimated that the piano was four feet tall, four feet long, and two feet wide, and that it weighed about 70 pounds. Vantassel testified that he believed it was an electric organ, not a true piano. Vantassel said that the claimant never mentioned injuring his back or shoulder and that, when they finished the work day, the claimant did not appear to be in any pain. Vantassel also said that the truck crushed the piano without any problems, and he did not recall having to get the truck repaired afterwards.

¶ 21 Marty Roberts, a truck driver for CCSR, testified that, in March 2005, he worked on a truck with the claimant. One day that March, the claimant had a sling on his right arm. Roberts asked him what had happened, and the claimant reported that he had been in bar fight the night before over something a man said to his wife. Roberts testified that, in the claimant's telling, the man shoved him down to the ground, and he landed on his shoulder.

¶ 22 Larry McGrath, the owner of CCSR, testified that he terminated the claimant's employment because his driving record was no longer insurable.

¶ 23 Dr. James McKechnie, the claimant's orthopedic surgeon, testified that the claimant's shoulder condition was caused by the injury in 2003, that his current condition rendered him completely disabled from his past work, and that possible future treatment might include a total shoulder replacement surgery. In rendering his opinions, Dr. McKechnie considered the claimant's reported history and did not review any of the claimant's medical records from Drs. Whalen, Kohlmann, Spaniol, Lack, or Emenecker.

¶ 24 At CCSR's request, Dr. James Emanuel, an orthopedic surgeon, examined the claimant on November 18, 2008, and reviewed his medical records. In his report and testimony, Dr. Emanuel opined that the claimant's injury was not related to the September 22, 2003, injury. Dr. Emanuel based his opinion on the fact that the claimant's medical records contained no documentation of any shoulder pain from September 22, 2003, until March 2005, when the claimant reported crippling shoulder pain, which would be consistent with an acute rotator cuff tear. He further noted that the claimant claimed in March 2005 that he had injured his shoulder while hammering a U-joint and that the pain had been bothering him over the last few days, but that the claimant reported no known injuries when he visited the emergency room that same month. Dr. Emanuel reviewed the claimant's MRI from 2005, which showed a massive tear in the rotator cuff. He opined that if this was an acute tear, the pain would be immediate and excruciating, likely immobilizing the arm. Dr. Emanuel testified that had the claimant suffered this injury in September 2003, he would not have been able to work for so many months afterwards. Dr. Emanuel agreed with Dr. Kohlmann's note that the claimant's prior drinking may have masked the pain of the injury for awhile and that the claimant could have injured his shoulder while intoxicated.

¶ 25 Dr. Emanuel also did not believe that the medical records indicated a repetitive-use injury to the shoulder, because the claimant's description of his work was inconsistent as to whether he repetitively lifted garbage. While the claimant reported to one doctor that he lifted a lot of heavy items, he reported to another that he did not lift the garbage, but only used his shoulder to operate the truck's stick shift. Dr. Emanuel testified that repetitive-use rotator cuff injuries typically involve individuals who perform repetitive work at shoulder height or above for a duration of time, and he

did not observe from the claimant's records any evidence that he performed any such repetitive work over a duration of time that could have caused his rotator cuff injury.

¶ 26 Following the arbitration hearing, the arbitrator found that, on September 22, 2003, the claimant sustained a back injury that arose out of and in the course of his employment and that CCSR paid for all necessary medical services for that injury. However, the arbitrator determined that the claimant failed to prove that the condition of his right shoulder is causally related to the September 22, 2003, accident. The arbitrator found the 18-month interval between the September 22, 2003, accident and the claimant's first treatment for a right shoulder injury in March 2005 to be critical, because such a time period with no treatment is inconsistent with ongoing problems of such severity.

¶ 27 The claimant filed a petition for review of the arbitrator's decision before the Commission. On May 31, 2011, the Commission affirmed and adopted the decision of the arbitrator. Thereafter, the claimant filed a petition for judicial review of the Commission's decision in the Circuit Court of Coles County. On February 10, 2012, the circuit court confirmed the Commission's decision, and this appeal followed.

¶ 28 In this appeal, the claimant argues that the Commission's decision, that his shoulder injury is not causally related to the September 22, 2003, accident, is against the manifest weight of the evidence. He argues that the evidence demonstrated that he suffered a repetitive stress shoulder injury. We disagree.

¶ 29 In a workers' compensation case, the claimant has the burden of proving, by a preponderance of the evidence, some causal relation between his employment and his injury. *Caterpillar Tractor*

Co. v. Industrial Commission, 129 Ill. 2d 52, 63m 541 N.E.2d 665 (1989). Whether a causal relationship exists between a claimant's employment and his injury is a question of fact to be resolved by the Commission. *Certi-Serve, Inc. v. Industrial Commission*, 101 Ill. 2d 236, 244, 461 N.E.2d 954 (1984). It is the function of the Commission to decide questions of fact and causation, judge the credibility of witnesses, and resolve conflicting evidence. *Odette v. Industrial Commission*, 79 Ill. 2d 249, 253, 403 N.E.2d 221 (1980). The Commission's determination on a question of fact will not be disturbed on review unless it is against the manifest weight of the evidence. *Orsini v. Industrial Commission*, 117 Ill. 2d 38, 44, 509 N.E.2d 1005 (1987). For a finding of fact to be contrary to the manifest weight of the evidence, an opposite conclusion must be clearly apparent. *Caterpillar, Inc. v. Industrial Commission*, 228 Ill. App. 3d 288, 291, 591 N.E.2d 894 (1992). Put another way, the Commission's determination on a question of fact is against the manifest weight of the evidence when no rational trier of fact could have agreed. *Dolce v. Industrial Commission*, 286 Ill. App. 3d 117, 120, 675 N.E.2d 175 (1996).

¶ 30 In this case, there is ample evidence supporting the Commission's finding that the claimant's shoulder injury is not causally related to the September 22, 2003, workplace accident. Several witnesses contradicted the claimant's assertion that he injured his shoulder while moving a piano on September 22. For instance, McGrath denied being involved in moving any piano and denied that the claimant reported an injury after moving a piano. In his testimony, Vantassel denied that the claimant complained of any injury after moving the piano or organ, and King denied that the claimant called and reported any injury to her. Dr. Hutti's notes and testimony regarding his September 24 treatment of the claimant indicated that the claimant reported only a lower back injury,

which Dr. Hutti treated successfully on one visit. The claimant never saw another doctor or reported any shoulder injury to anyone until March 2005, when he reported to Dr. Whalen and emergency room personnel that he had excruciating pain in his right shoulder. The claimant also gave conflicting histories to his physicians: he did not report a shoulder injury to Dr. Hutti; he told Dr. Whalen that he hurt himself hammering a U-joint; he told the emergency room that he did not suffer any recent injuries; and he told Dr. Kohlmann in 2005 that he had had pain for about one year, but that it had become severe in the prior two weeks.

¶ 31 Further, Dr. Emanuel testified that the claimant's medical records did not support the claimant's allegation that he suffered a shoulder injury on September 22, 2003, because the claimant never mentioned an injury and then suddenly presented with a severe rotator cuff tear in March 2005. While Dr. McKechnie testified that he believed the claimant injured his shoulder in 2003, he admitted that his opinion was based on information that the claimant provided and that he did not review any of the claimant's medical records. There was also testimony indicating another possible cause for the claimant's injury, that being the bar fight that Roberts testified that the claimant described to him. It is the Commission's duty to resolve conflicts in the evidence, and here, the Commission discounted the claimant's testimony and determined that his failure to report the shoulder injury to Dr. Hutti or anyone else prior to seeking treatment in 2005 demonstrated that the injury was not caused by the September 22, 2003, accident. It is not our function to reweigh the evidence, and based on the record, we cannot say that an opposite conclusion is clearly apparent.

¶ 32 The claimant further argues that CCSR's voluntary payments undermine its position, because it would not have paid his medical bills unless his injury was compensable. However, payment of

compensation by an employer to an injured employee does not constitute an admission of the employer's liability to pay compensation. 820 ILCS 305/8(b)(7) (West 2006); *R.D. Masonry, Inc. v. Industrial Commission*, 215 Ill. 2d 397, 408, 830 N.E.2d 584 (2005). The fact that CCSR voluntarily paid certain sums did not render its witnesses or evidence more or less credible or make its liability more or less probable.

¶ 33 Finally, the claimant argues that the arbitrator's decision failed to address his application for a repetitive-stress injury, and instead addressed only his claim that the injury was sustained in the September 22, 2003, accident. However, the claimant presented this same argument to the Commission, along with further argument that the evidence supports a finding of a repetitive-trauma injury. The Commission nonetheless issued a decision finding that the claimant's shoulder injury is not compensable. We interpret this decision as a rejection of the claimant's repetitive-stress claim. There was ample evidence to support the Commission's finding in this regard: Dr. Emanuel opined that the record did not support the claimant's allegation that his shoulder injury was a repetitive one, because there was no evidence that the claimant performed the type of work that could cause a shoulder injury like the one claimant suffered.

¶ 34 For the foregoing reasons, we affirm the judgment of the circuit court of Coles County, which confirmed the decision of the Commission.

¶ 35 Affirmed.