

NOTICE

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2013 IL App (5th) 130049WC-U

NO. 5-13-0049WC

IN THE APPELLATE COURT

OF ILLINOIS

FIFTH DISTRICT

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

ILLINOIS WORKERS' COMPENSATION COMMISSION DIVISION

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GARY BRUCE GIBBONS,	)	Appeal from the
Appellant,	)	Circuit Court of
v.	)	Saline County.
ILLINOIS WORKERS' COMPENSATION	)	No. 12-MR-21
COMMISSION <i>et al.</i> (Village of Carrier Mills,	)	
Appellee).	)	Honorable
	)	Todd D. Lambert,
	)	Judge, Presiding.

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JUSTICE HARRIS delivered the judgment of the court.

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

**ORDER**

- ¶ 1 *Held:* The Commission committed no error in finding claimant's cervical spine condition of ill-being was not causally connected to his work accident and denying benefits associated with that condition.
- ¶ 2 On April 30, 2008, claimant, Gary Bruce Gibbons, filed an application for adjustment of claim pursuant to the Workers' Compensation Act (Act) (820 ILCS 305/1 to 30 (West 2006)), alleging work-related injuries and seeking benefits from the employer, the Village of Carrier Mills. Following a hearing, the arbitrator determined claimant sustained left knee and cervical spine injuries that arose out of and in the course of his employment and awarded claimant (1) 86 weeks' permanent partial disability (PPD) benefits for a 40% loss of claimant's left leg, (2) 125 weeks' PPD benefits for a 25% loss of the person as a whole, and (3) \$221,745.02 for reasonable

and necessary medical services.

¶ 3 On review, the Illinois Workers' Compensation Commission (Commission), with one commissioner dissenting, determined claimant failed to prove a causal connection between his work accident and his cervical spine condition of ill-being. It vacated the arbitrator's awards of medical expenses and PPD in connection with that injury but otherwise affirmed and adopted the arbitrator's decision. On judicial review, the circuit court of Saline County confirmed the Commission's decision. Claimant appeals, arguing the Commission erred in (1) finding he failed to prove his cervical spine condition of ill-being was causally connected to his work-related accident and (2) denying him medical expenses and PPD benefits associated with his cervical spine condition of ill-being. We affirm.

¶ 4

#### I. BACKGROUND

¶ 5 At arbitration, claimant testified he worked as a correctional officer for Shawnee Correctional Center. In April 2008, he had an additional job and worked for the employer as a firefighter. Claimant testified, on April 14, 2008, he sustained accidental injuries while working for the employer when he "stepped off of a platform in a smoke filled room and tore [his] knee." He stated his "knee went one way" and he slid down against a wall. Claimant had not realized he was on a platform and when he stepped off he "kind of fell towards the wall." He testified he wore a fire helmet and approximately 80 pounds of gear and struck his head "[o]n the wall going down." Claimant denied any prior problems with, or treatment to, his left knee, neck, or cervical spine.

¶ 6 Following the accident, claimant was transported to the hospital by ambulance. He testified he reported to ambulance personnel that, in addition to his knee injury, he had "a little

bit of a headache" and soreness "up here." However, records show claimant complained only of left knee pain and reported he "stepped off front porch, missed step [and] heard [left] knee 'pop.'"

Records do not show claimant reported a headache and state he was experiencing no chest pain. Emergency room records show claimant reported only injury to his left foot, ankle, leg, and knee.

¶ 7 Shortly following his accident, claimant saw Dr. Steven Knight, his primary care physician. He reported that he "stepped off of a 2 foot ledge while on a fire call" and "heard a pop and felt pain in his left knee." Claimant testified he was given pain medication after his accident that "pretty well took care" of his pain.

¶ 8 On April 28, 2008, approximately two weeks after his accident, claimant saw Dr. George Paletta with a chief complaint of a left knee injury. Claimant provided a history of his accident, reporting "he stepped off of a ledge with his left foot" and "heard and felt a loud pop in the knee and the knee gave way on him, causing him to go down." Dr. Paletta's impression was an acute anterior cruciate ligament tear and a medial meniscal tear of the left knee. He recommended surgery which claimant underwent on May 8, 2008, and February 2, 2010. On March 14, 2011, Dr. Paletta released claimant to return to full-duty work with respect to his knee condition of ill-being.

¶ 9 On August 18, 2008, claimant saw Dr. Matthew Gornet, an orthopedic surgeon, for a spinal examination. Claimant complained of neck pain into both shoulders, down both arms, and into his fingers. He also experienced numbness in his right arm and hand, and weakness in both arms. Claimant reported that, while working as a firefighter, he stepped through a door and fell through a step, dropping two feet. Dr. Gornet's records state claimant "twisted his knee severely

and hit his head against the wall." Claimant reported that his neck symptoms progressed and, at the time he saw Dr. Gornet, were constant and worse with any type of fixed head position, arm activity, bending, or twisting. Dr. Gornet found that, based on the history provided, claimant's symptoms were causally connected to his work accident.

¶ 10 On October 2, 2008, claimant followed up with Dr. Gornet who noted claimant underwent a magnetic resonance imaging (MRI) that revealed "disc herniations bilobular at C5-6 component to right and left at that level as well as left-sided C6-7." Dr. Gornet recommended a two-level disc replacement at C5-6 and C6-7. On November 17, 2008, Dr. Gornet's records state claimant underwent a CT myelogram, showing "disc pathology central and bilobular at C5-6 as well as central with a bone spur and disc protrusion on the left at C6-7." On January 14, 2009, Dr. Gornet performed surgery on claimant's cervical spine. Claimant testified his condition improved after surgery. On January 28, 2010, Dr. Gornet released him to return to full-duty work.

¶ 11 Claimant asserted that, following his accident and before his knee surgeries, he had soreness in his neck. After his surgeries he was on pain medication. He underwent physical therapy for his knee and that condition began to improve. Claimant stopped taking pain medication and the pain in his neck and arms gradually worsened. He denied any other accidents between his April 2008 accident and when he began seeking treatment for his neck injury, stating he had been on crutches and could not get out of a chair.

¶ 12 Claimant acknowledged that, when first seeking emergency medical treatment after his accident, he reported injury to his left foot, ankle, and knee but did not mention his neck. He admitted he also failed to report that he hit his head against the wall and, on April 14, 2008, he

made only knee-related complaints to Dr. Knight. When seeing Dr. Paletta for the first time about two weeks after his accident, claimant did not make any head, neck, shoulder, or arm complaints. Further he acknowledged Dr. Gornet, whom he first saw in August 2008, was the first doctor he told about his neck-related complaints.

¶ 13 Claimant explained he did not make neck-related complaints when first seeking medical care because he "didn't have any so much right then" and because he "thought it was just soreness from the fall." He also testified the injury to his knee was a lot worse.

¶ 14 At arbitration, the employer presented a report prepared by Dr. John Grimm and dated January 23, 2009. Dr. Grimm reviewed claimant's medical records and determined claimant's cervical spine injury was not job related. He stated as follows:

"It does appear that there is degenerative pathology in [claimant's] cervical spine which may account for his neck and arm complaints. There are no acute findings at C6-7 to account for this i.e. the disc herniation at C6-7 appears to be old and, upon my review of the CT myelogram, I do not see any evidence of soft disc herniation but more so related to spondylotic degenerative change. There may be a recent disc herniation at C5-6 superimposed upon older degenerative spondylotic change at that level. His neurologic exam is somewhat equivocal in that the findings were not very specific nor focal and actually would probably be appropriate for his complaints in that his complaints were also fairly nonspecific being neck pain with radiation into both upper extremities. It may

very well be that [claimant's] complaints are related to his  
degenerative change[.]"

¶ 15 Dr. Grimm continued, stating he had a hard time tying claimant's neck and upper extremity complaints to his work injury, noting there was no documentation of any neck-related injury at the time of his accident. Dr. Grimm pointed out that Dr. Gornet was the first medical provider to mention a neck-related injury during his initial visit with claimant in August 2008, four months after claimant's work accident. Dr. Grimm stated as follows:

"Apparently [claimant] indicates that he struck his head at the time that he misstepped and twisted his left knee. This certainly would be compatible with a neck injury if that indeed took place. However, there was never any mention of that as not documented by any of the other caregivers in his medical history. Even if the injury had taken place (i.e. striking his head at the time of the injury), I would still have a hard time attributing his symptoms to his injury if he indeed did not have any of the complaints for 3-4 months following the injury. I would expect his complaints to surface within a few weeks of the initial injury."

Dr. Grimm opined claimant's cervical spine complaints were related to degenerative changes in his cervical spine.

¶ 16 At arbitration, claimant presented Dr. Gornet's deposition. Initially, Dr. Gornet testified it was not possible to date findings from an MRI or other films. Regarding claimant's cervical spine injury and causal connection, he testified the history claimant provided was the type often

seen in patients with multiple injuries where "the perceived more severe injury is dealt with first." Dr. Gornet recalled claimant had significant knee pain but gave some history of chest pain. He stated claimant's pathology was "fairly classic of the type of disc lesions that could easily" cause anterior chest or shoulder pain. Further, Dr. Gornet testified that, assuming the history claimant provided was correct, his accident was the type that "could aggravate his preexisting degenerative changes, as well as cause some new pathology." He then stated as follows:

"And so if you assume that's correct to me I have no problem causally connecting this.

If you assume that it's not correct and that history did not occur then it wouldn't be causally connected. And so, you know, a lot of this is based on this is what [claimant] told me. You know, he seems credible to me and so that's what I'm basing that on, because the type of injury is the type of thing that at minimum can easily aggravate this condition and cause the symptoms, but I do a little bit state that his history of chest pain and shoulder symptoms, again, I disagree with Dr. Grimm in the sense that those complaints are the type of complaints that are often cervical related."

¶ 17 On cross-examination, Dr. Gornet agreed he saw no mention of neck complaints in claimant's medical records prior to when he began treating claimant "other than \*\*\* the chest pain, which may be referred from the cervical spine." He stated he would not necessarily expect claimant to have had neck symptoms shortly after the accident and testified:

"[M]y recollection is within four or five or six weeks this person was at a cardiologist getting worked up. And so, some of those components of pain, okay, may very well have been cervical in origin it's just that no one really looked. And so, in fairness that is a descriptor of pain early on that isn't being credited to the cervical spine."

Dr. Gornet further believed claimant's knee injury and the medication he was placed on for that injury could have "masked" his cervical spine injury, causing symptoms not to appear within the first few weeks.

¶ 18 On June 2, 2011, the arbitrator issued his decision, finding claimant sustained both left knee and cervical spine injuries that arose out of and in the course of his employment on April 14, 2008. He based his finding that claimant's cervical spine condition of ill-being was causally connected to his work on what he found to be claimant's credible testimony, the diagnostic studies, and Dr. Gornet's testimony. The arbitrator determined Dr. Gornet's opinions were more persuasive than those of Dr. Grimm. He also found it reasonable to believe that the medication claimant took for his knee-related injury "masked" his neck symptoms, explaining claimant's delay in reporting symptoms.

¶ 19 On April 17, 2012, the Commission, with one commissioner dissenting, found claimant failed to prove a causal connection between his work accident and his cervical spine condition of ill-being. It vacated the arbitrator's award of benefits in connection with that injury but otherwise affirmed and adopted his decision. The Commission noted claimant provided testimony that was inconsistent with medical records and the arbitrator made factual findings not supported by the



record. Further, it disagreed with the arbitrator's finding that Dr. Gornet was more credible than Dr. Grimm, noting Dr. Gornet also relied upon facts that were not supported by the record. The Commission determined claimant was not credible and noted his four-month delay in seeking treatment for any cervical condition. On January 14, 2013, the circuit court of Saline County confirmed the Commission's decision.

¶ 20 This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 Claimant argues the Commission erred by finding he failed to prove a causal connection between his cervical spine condition of ill-being and his April 2008, work-related accident. He argues a causal connection between the two was supported by his own credible testimony, the medical records, and Dr. Gornet's credible testimony.

¶ 23 "Whether a causal connection exists between a claimant's condition of ill-being and his work-related accident is a question of fact to be resolved by the Commission." *Westin Hotel v. Industrial Comm'n*, 372 Ill. App. 3d 527, 538, 865 N.E.2d 342, 353 (2007). "In resolving questions of fact, it is the function of the Commission to judge the credibility of the witnesses and resolve conflicting medical evidence." *City of Springfield v. Illinois Workers' Compensation Comm'n*, 388 Ill. App. 3d 297, 315, 901 N.E.2d 1066, 1081 (2009). On review, the Commission's decision will not be disturbed unless it is against the manifest weight of the evidence. *Westin*, 372 Ill. App. 3d at 538, 865 N.E.2d at 353. "The relevant inquiry is whether the evidence is sufficient to support the Commission's finding, not whether this court or any other might reach an opposite conclusion." *Westin*, 372 Ill. App. 3d at 538-39, 865 N.E.2d at 353. "For the Commission's decision to be against the manifest weight of the evidence, the opposite

conclusion must be clearly apparent." *Westin*, 372 Ill. App. 3d at 539, 865 N.E.2d at 353.

¶ 24 Here, the Commission determined claimant failed to prove his cervical spine condition of ill-being was causally connected to his work-related accident. The record contains sufficient evidence to support that finding and the Commission's decision is not against the manifest weight of the evidence.

¶ 25 At arbitration, claimant testified he hit his head during his April 2008 fall at work and, thereafter, experienced not only knee-related symptoms but soreness in his neck. He stated he initially reported "a little bit of a headache" and soreness "up here" to ambulance personnel. Claimant indicated the soreness in his neck was not an issue for him while he was on pain medication for his knee condition but testified that, once his knee began to improve, his neck symptoms gradually worsened. In August 2008, he reported those neck-related symptoms to Dr. Gornet.

¶ 26 The Commission determined claimant was not credible "[b]ased upon a review of the record as a whole" and noted medical records did not support his testimony. In particular, although claimant testified he reported a headache and soreness "up here" to first responding medical personnel, medical records show that claimant only made knee-related complaints. The records show claimant did not report any symptoms related to his cervical spine condition of ill-being until August 2008, approximately four months after his accident.

¶ 27 Additionally, until claimant began seeking medical treatment with Dr. Gornet in August 2008, none of the accident histories recorded in his medical records stated he hit his head at the time of his work accident. Instead, records show claimant complained of pain in his left knee to ambulance personnel and reported that he "stepped off front porch, missed step [and] heard [left]

knee 'pop.' " Shortly after his accident, claimant reported to Dr. Knight that he "stepped off of a 2 foot ledge while on a fire call" and "heard a pop and felt pain in his left knee." Approximately two weeks later, on April 28, 2008, he saw Dr. Paletta and reported that "he stepped off of a ledge with his left foot" and "heard and felt a loud pop in the knee and the knee gave way on him, causing him to go down."

¶ 28 It was within the province of the Commission to determine witness credibility and it found claimant was not credible. The record contains evidence to support that finding based on claimant's four-month delay in reporting cervical-spine symptoms, the fact that medical records failed to corroborate or refute his testimony, and the accident histories recorded in his medical records prior to August 2008. The record fails to reflect the Commission committed error in judging claimant's credibility.

¶ 29 In this case, the parties also presented conflicting medical opinion evidence. Claimant presented the testimony of Dr. Gornet who opined claimant's cervical condition of ill-being was causally connected to his work-related accident. Dr. Gornet testified claimant's cervical spine injury could have been "masked" by pain medication he was taking for his knee condition and that, because claimant's knee injury was more severe, it was the injury that was dealt with first. However, Dr. Gornet also relied heavily on the accident history claimant provided, including his belief that claimant gave some history of chest pain shortly following his accident, noting such symptoms could have been "cervical in origin." As the Commission pointed out, the medical records do not support a history of chest pain following the accident and ambulance records actually show claimant denied experiencing any chest pain. Dr. Gornet further supported his opinion with his "recollection" that "within four or five or six weeks [claimant] was at a

cardiologist getting worked up." However, as the Commission noted, there were "no records of this cardiologist visit" and claimant "did not testify about having any chest pains whatsoever."

¶ 30 In contrast to Dr. Gornet, Dr. Grimm found no causal connection between claimant's cervical condition and his work accident. He noted there was no mention in claimant's medical records that he struck his head during his work accident and that claimant had no cervical complaints for three to four months after his accident. Dr. Grimm stated he would have expected "complaints to surface within a few weeks of the initial injury." Again, it is within the province of the Commission to resolve conflicts in the medical evidence. The record does not show the Commission erred in finding Dr. Grimm's opinions more credible than those of Dr. Gornet, particularly where Dr. Gornet relied on facts that were not supported by either claimant's testimony or the medical records.

¶ 31 Here, the record supports the Commission's factual findings, showing claimant did not report hitting his head or experiencing any neck-related symptoms until four months after his accident, claimant provided testimony that was inconsistent with medical records, and Dr. Gornet relied on facts not supported by any other evidence. It is not the function of this court to reweigh the evidence. Under the facts presented, an opposite conclusion from that of the Commission is not clearly apparent. The Commission committed no error.

¶ 32 On appeal, claimant additionally argues the Commission erred in vacating the arbitrator's awards of medical expenses and PPD benefits made in connection with his cervical spine condition of ill-being. However, because the Commission committed no error in finding no causal relationship between claimant's employment and that condition of ill-being, it also committed no error in denying claimant benefits under the Act for that injury.

¶ 33

### III. CONCLUSION

¶ 34 For the reasons stated, we affirm the circuit court's judgment.

¶ 35 Affirmed.