2014 IL App (5th) 130301WC-U

NO. 5-13-0301WC

Order filed April 28, 2014

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

WORKERS' COMPENSATION COMMISSION DIVISION

BRYAN MATHIS,	)	Appeal from the
	)	Circuit Court of
Appellant,	)	Madison County.
	)	
v.	)	No. 12-MR-214
	)	
WORKERS' COMPENSATION COMMISSION,	)	
et al.,	)	Honorable
	)	Barbara L. Crowder,
(U.S. Steel, Appellee).	)	Judge, presiding.

JUSTICE HUDSON delivered the judgment of the court.

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

ORDER

¶ 1 *Held*: The Commission did not err in finding that claimant's testimony was not credible and that claimant failed to prove that the stairs he fell down had a defect such that his fall was related to his employment.

¶ 2 I. INTRODUCTION

¶ 3 Claimant, Bryan Mathis, appeals an order of the circuit court of Madison County confirming a decision of the Illinois Workers' Compensation Commission (Commission)

denying his claim for benefits under the Workers' Compensation Act (820 ILCS 305/1 *et seq*. (West 2008)). Claimant now appeals. For the reasons that follow, we affirm.

¶ 4 On appeal, claimant argues that the Commission's findings that he failed to prove that he suffered a work-related accident and that his condition of ill-being is causally related to his employment with respondent, U.S. Steel, are contrary to the manifest weight of the evidence. Both elements are essential to a workers' compensation claim. See *Homebrite Ace Hardware v. Industrial Comm'n*, 351 Ill. App. 3d 333, 339-40 (2004); *Fickas v. Industrial Comm'n*, 308 Ill. App. 3d 1037, 1041 (1999). Here, as we hold that the Commission's decision that claimant's accident did not arise out of and occur in the course of his employment is not against the manifest weight of the evidence, we need not consider the subsequent question of whether claimant's condition of ill-being, *i.e.*, the condition of his left hip, is causally related to that accident.

¶ 5 II. BACKGROUND

¶ 6 Claimant has been employed by respondent for a period of 10 years as an electrician. On September 14, 2008, claimant had finished his shift for the day. Claimant had taken a shower at the company locker room. He then put on his clothes and started to leave. As he was walking down some metal steps holding the handrail, he slipped and fell. Claimant testified that the steps were wet, since they are "frequented by people as they come out of the showers." He was still on respondent's property. Claimant landed on his left hip. When he opened his eyes, two employees–Mark Lotts and Don Corby–were standing over him. They told claimant that he had gone unconscious. Claimant completed an accident report (the report does not mention that there was water on the steps where claimant fell). Claimant testified that when he regained consciousness, he checked to see if there was water on the floor. Specifically, he "used [his]

hand on the side of the run [he] had fallen on and when [he] lifted it up, [he] had moisture on [his] hand so a lot of water was on the step."

¶ 7 Claimant then went to the Veeder Clinic, which is respondent's healthcare facility, where he was seen by Dr. Parker. Claimant testified that he told Parker of the water on the steps, though this fact does not appear in Parker's records. Claimant explained that Parker was aware of the steps and the water. Parker placed claimant on light duty and instructed him to see his own physician. He also ordered an X-ray study of claimant's left hip, which showed "moderate to severe degenerative changes with loss of joint space," "heavy sclerosis of the acetabulum and femoral head," "[m]ultiple calcified phleboliths," but was "negative for [an] obvious acute, displaced fracture." Records reviewed by Dr. Nogalski (respondent's independent medical examiner) but not offered into evidence, indicate, according to Nogalski, that claimant returned to Veeder a few weeks after his fall and stated that his condition had returned to a baseline level. Claimant testified that he did not recall going to Veeder on a subsequent occasion or making the statement to which Nogalski referred.

¶ 8 The Commission, adopting the decision of the arbitrator, found that claimant had failed to prove that "the accident was anything other than an unexplained fall." It found claimant lacked credibility for several reasons. First, the Commission found it incredible that claimant would recall his hand being wet after he fell down a flight of stairs and lost consciousness. The Commission also found it noteworthy that there was no mention of water being on the steps prior to the arbitration hearing in any of the doctors' records or in the accident report claimant completed. Second, it cited claimant's testimony that he did not realize that there was anything wrong with his hip prior to his fall. The Commission explained, "The medical records contain so many instances of left hip pain [that] he could not have simply forgotten about an occasional

complaint." The circuit court of Madison County confirmed the Commission's decision, and this appeal followed.

¶ 9 III. ANALYSIS

¶ 10 Claimant contests the Commission's determination that his fall did not constitute a work-related accident. To be compensable, an accident must arise out of and occur in the course of employment. *Village of Villa Park v. Illinois Workers' Compensation Comm'n*, 2013 IL App (2d) 130038WC, ¶ 17. Generally, falls can be grouped into three categories: those "distinctly associated with employment"; those "personal to the employee" (*i.e.*, idiopathic); and those that originate in "neutral risks that have no particular employment or personal characteristics." *Baldwin v. Illinois Workers' Compensation Comm'n*, 409 Ill. App. 3d 472, 478 (2011). Thus, where a fall resulting from an apparently neutral risk actually results from a risk related to employment, it arises out of employment. *Id.* Conversely, "an injury resulting from a neutral risk to which the general public is equally exposed does not arise out of the employment." *Id.* We address these issues using the manifest-weight standard. *Oldham v. Industrial Comm'n*, 139 Ill. App. 3d 594, 596 (1985). Thus, we will reverse only if an opposite conclusion is clearly apparent. See *University of Illinois v. Industrial Comm'n*, 365 Ill. App. 3d 906, 910 (2006).

¶ 11 Claimant fell while traversing a flight of stairs on respondent's premises. In itself, this is insufficient to establish respondent's liability, as the act of traversing a flight of stairs does not expose a claimant to a greater risk of harm than that faced by the general public. *Baldwin*, 409 Ill. App. 3d at 478. If, however, some condition or defect of the stairs exposed the claimant to a risk beyond that experienced by the general public, claimant could recover for his injury. See *Illinois Consolidated Telephone Co. v. Industrial Comm'n*, 314 Ill. App. 3d 347, 350 (2000) ("More importantly, we believe that claimant was exposed to a greater risk than the general

public because she was continually forced to use stairs to seek personal comfort during her workday. Additionally, it would not have been unreasonable for the Commission to have inferred that the accident was attributable to worn stair treads, the lack of a handrail on the landing, or slipperiness of the landing itself."). Here, the only possible defect alleged by claimant is that the stairs were often wet. Thus, a question of fact is squarely presented: were the stairs wet at the time claimant slipped and fell down them?

¶ 12 Unfortunately for claimant, the Commission found that "[t]he claim of water on the steps is not supported by anything other than [claimant's] own testimony, which is thin at best." To prevail before this court, claimant must establish that an opposite conclusion to this one is clearly apparent. See *University of Illinois*, 365 Ill. App. 3d at 910. He makes several arguments to that end.

¶ 13 First, claimant contends that his testimony regarding water being on the steps was unrebutted. However, it is well established that the Commission, as the trier of fact, is not bound to accept even unrebutted testimony, so long as it has a sound reason for doing so. *Sorenson v. Industrial Comm'n*, 281 Ill. App. 3d 373, 384 (1996); see also *Franciscan Communities, Inc. v. Hamer*, 2012 IL App (2d) 110431, ¶ 47. The Commission articulated several reasons for doubting the veracity of claimant's testimony. Notably, the Commission observed that claimant did not mention water being on the steps until the first day of the arbitration hearing. Indeed, neither the accident report completed by claimant nor any of his medical records document this allegation. In short, we find unpersuasive claimant's assertion that the Commission was required to accept his testimony because it was unrebutted.

¶ 14 Second, claimant attacks the Commission's finding that his account of the fall was inherently improbable. Specifically, the Commission questioned how claimant would have

remembered that "his hand was wet" after he fell "down half the stairwell, hit his hip, an already sore area, along with his low back, [and] hit his head to the point where he lost consciousness." Claimant now argues that he also testified that he used his hand to get up after the fall, which, he suggests, corroborates his testimony that his hand was wet. While these facts would corroborate each other, we fail to see how they undermine the Commission's finding regarding claimant's memory. Even unrebutted testimony may be rejected where it is inherently improbable or otherwise contradicted by the circumstances. *Sweilem v. Department of Revenue*, 372 Ill. App. 3d 475, 485 (2007). Hence, we find no basis to disturb the Commission's assessment of claimant's credibility here.

¶ 15 Third, claimant contends that an adverse inference should be drawn from respondent's failure to call Don Corby, who witnessed the accident, to testify that the stairs were wet. While an adverse inference may be drawn from a party's failure to call a witness in certain circumstances, claimant makes no attempt to establish that those circumstances are present here. Generally, this inference may be drawn where "the missing witness was under the control of the party to be charged and could have been produced by reasonable diligence, the witness was not equally available to the party requesting that the inference be made, a reasonably prudent person would have produced the witness if the party believed that the testimony would be favorable, and no reasonable excuse for the failure to produce the witness is shown." *Schaffner v. Chicago & North Western Transportation Co.*, 129 Ill. 2d 1, 22 (1989). In this case, for example, claimant does not explain why he could not have simply called Corby to testify that the steps were wet. Having not established the foundational requirements, claimant has not demonstrated that the adverse inference he seeks is appropriate in this case.

¶ 16 Fourth, claimant complains of the Commission's finding that he denied prior problems with his left hip during the arbitration hearing, though such problems were documented in his medical records. Those records do, indeed, contain references to prior problems with claimant's left hip. For example, an "initial evaluation" dated September 2, 2008, states that claimant was evaluated for "left hip arthritis." Likewise, records from Dr. Sheridan indicate that claimant discussed a left hip resurfacing procedure in August 2006. Claimant testified that Sheridan's records were erroneous, and it was actually the right hip that was discussed, but this was a contention that the Commission was not required to, and did not, accept. Claimant points out that he explained during his testimony that he believed that the treatment he was receiving immediately prior to his accident was "more for his back." This is undoubtedly true; indeed, we do not find the Commission's critique of claimant's credibility on this basis to be terribly compelling. Nevertheless, as discussed above, the Commission's findings regarding claimant's credibility and his failure to prove that there was water on the steps rest on other sound grounds. Thus, irrespective of the relative merit of claimant's argument on this point, we cannot say that the Commission's ultimate decision regarding the accident is contrary to the manifest weight of the evidence.

¶ 17 Fifth and finally, claimant criticizes the Commission's "apparent conclusion that [his] fall was due to a 'personal risk,' because of a prior incident in which [he] fell because his leg went out after an episode of severe leg pain followed by weakness." Whether claimant's fall was due to a personal or neutral risk, the question of whether there was water present on the steps carried essentially the same import. In the case of a fall resulting from an apparently neutral risk, "a claimant must present evidence which supports a reasonable inference that the fall stemmed from a risk related to the employment." *Baldwin*, 409 Ill. App. 3d at 478. Similarly, a claimant may

recover for an injury suffered as a result of an idiopathic fall "where the employment conditions significantly contributed to the injury by increasing the risk of falling or the effects of the fall." *Id*. at 479. Thus, assuming, *arguendo*, the Commission classified claimant's fall as idiopathic, it still had to determine whether some condition of the steps contributed to the fall, such as whether they were wet. See *id*. ("The claimant offered no evidence that, on November 19, 2006, any condition of the premises in which she was working or of the staircase on which she fell contributed to her [idiopathic] fall or placed her in a position which increased the dangerous effects of the fall.").

¶ 18 Moreover, we note that the Commission expressly held that "there is insufficient evidence to prove the accident was anything other than an unexplained fall." Hence, claimant's assertion that the Commission found his fall was idiopathic is not borne out by the plain language of the Commission's actual decision. In other words, it provides us with no basis to disturb the finding of the Commission regarding claimant's failure to prove that there was water on the steps when he slipped.

¶ 19 Before closing, though we need not do so in light of our resolution of the first issue, our review of the briefs and the record indicates that the Commission's decision regarding the lack of a causal connection between claimant's condition of ill-being and his fall is not contrary to the manifest weight of the evidence. This issue largely turned on resolving a conflict in the opinions of claimant's treating physician and respondent's IME. This is an area in which we owe substantial deference to the Commission given its recognized expertise in medical matters. See *Long v. Industrial Comm'n*, 76 Ill. 2d 561, 566 (1979). Claimant's submission would not persuade us to abandon this deference in this case.

¶ 20 IV. CONCLUSION

¶ 21 In light of the foregoing, the decision of the circuit court of Madison County confirming the decision of the Commission is affirmed.

¶ 22 Affirmed.